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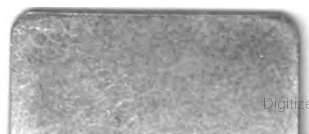
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COMPENDIUM OF
CIVIL AND CANON LAW

IN THE CASE OF

REV. P. M. SHEEHAN

VERSUS

RT. REV. JOHN TUIGG,

Bishop of Pittsburgh.

HISTORY OF THE CASE,
NOTES OF TESTIMONY,
EXHIBITS,
ARGUMENTS OF COUNSEL,
and OPINION AND DECISION OF COURT.

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JOHN J. MURPHY, PUBLISHER, PITTSBURGH, PA.

PITTSBURGH:

A. A. ANDERSON & SON, BOOK AND JOB PRINTERS, 99 FIFTH AVENUE.

1881.

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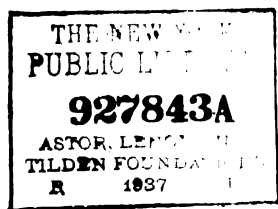
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EXPLANATION.

The great demand for the paper book and evidence published in this case, originally for the convenience of the judge trying the case, and at his request, has induced the publisher to have an edition of the same, as submitted to the court, republished, furnishing the entire court proceedings, including stenographic reports of the oral arguments of counsel, and adding thereto the opinion and finding of the court on the points of civil and canon law embraced in the controversy. If the book prove interesting and instructive to the readers on a question so important as the relations of the civil to the canon law in this country, as developed on this celebrated trial, an object of the publisher will have been accomplished.

For the information of the readers as to the points really decided by Judge White in this case, the following *Syllabus* from the *Pittsburgh Legal Journal*, of June 15, 1881, is submitted :

REV. PATRICK M. SHEEHAN vs. RT. REV. JOHN TUIGG, BISHOP
OF THE DIOCESE OF PITTSBURGH.

Reference under Act of 1874 to Judge dispensing with Jury.

- 37 DE 126 A
1. The civil courts will not exercise jurisdiction to review the discretion of the Bishop of a diocese of the Catholic Church, in refusing a priest the pastorship of a church.
 2. The civil courts will not interfere with church discipline or regulations as to the qualifications required for appointment to church offices. The authority and discretion to pass upon the qualifications of priests for appointments to pastoral or other labor, being by the canons of the Catholic Church vested in the Bishop of the diocese, he is the exclusive judge in the matter, free from supervision, control or interference by the civil courts. If for refusal of

such an appointment to a qualified priest the laws of the Catholic Church afford the party aggrieved no remedy, he is without one.

3. The Bishop of a diocese in the Catholic Church, holding all the real and personal church property in his own name, in trust for the diocese, on assuming the duties of the office, and taking the required oath, assumes, and becomes liable individually for the debts and contracts of the diocese, whether contracted by him, as Bishop, or by his predecessor in office, and an action of assumpsit may be maintained against the Bishop individually, on such contracts or obligations.

4. A priest ordained by the title of "Mission," has an absolute right to support from the Bishop, by reason of swearing perpetual service to the diocese. No priest, under the laws of the church, can be deprived of this right of support by the Bishop, or in any other way than by trial, conviction and sentence, as prescribed by the law of the Council of Baltimore.

5. An extra-judicial appeal from an extra-judicial sentence by a Bishop, requiring submission to, and decision by a foreign tribunal, is not an adequate remedy for an aggrieved priest, within the meaning of the civil law.

6. Where the right of support and question of property is involved in an ecclesiastical organization, civil courts will exercise concurrent jurisdiction, although a remedy for the alleged grievance may exist within the church, and the same has not been invoked or exhausted.

IN THE
Court of Common Pleas No. 2 of Allegheny Co.

No. 178 JANUARY TERM, 1880.

REV. PATRICK M. SHEEHAN,
PLAINTIFF,

VERSUS

RT. REV. JOHN TUIGG,
BISHOP OF THE DIOCESE OF PITTSBURGH,
DEFENDANT.

BEFORE HON. J. W. F. WHITE,

Referee under the Act of 1874.

PAPER BOOK OF DEFENDANT.

DOCKET ENTRIES, ARGUMENT, NOTES OF TESTIMONY, EXHIBITS, &c.

CHAS. F. McKENNA,
JOHN BARTON,

Attorneys for Defendant.

PITTSBURGH:

A. A. ANDERSON & SON, BOOK AND JOB PRINTERS, 99 FIFTH AVENUE.
1881.

DOCKET ENTRIES.

REV. PATRICK SHEEHAN, vs. RT. REV. JOHN TUIGG, Bishop of the Diocese of Pitts- burgh.	}	No. 173 January Term, 1880, Court of Common Pleas No. 2 of Allegheny County. Summons to 1st Monday of December, 1879. Affidavit filed for \$2.- 400. Served November 14th, 1879. December 1st, 1879, affidavit of defence filed. May 7th, 1880, defendant pleaded <i>non assumpsit</i> with leave, etc. January 19th, 1881, on trial list and jury sworn, and now, January 20th, 1881, jurors withdrawn and by agreement of parties plaintiff and defendant this case shall be tried by Hon. J. W. White under the act of 1874. See agreement filed May 3d, 1881. Supplemental agreement filed.
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HISTORY OF THE CASE.

The plaintiff, Rev. Patrick M. Sheehan was regularly ordained a priest for the diocese of Pittsburgh in the year 1857 by the late Rt. Rev. M. O'Connor, first bishop of Pittsburgh. After his ordination he was appointed, from time to time, to various missions or congregations, by Bishop O'Connor and Bishop Domenec, who succeeded to the charge of the diocese of Pittsburgh on the resignation of the former in the year 1860. About the Christmas or New Year's holidays of 1870 and 1871 Father Sheehan, while in charge of a congregation or mission at Cameron's Bottom, Indiana county, Pennsylvania, without the knowledge or permission of Bishop Domenec, his Superior left said position and visited the City of Pittsburgh. His reason for so leaving his congregation was, he alleges, because of an attack of partial paralysis and rheumatism, necessitating treatment in a hospital, which he says he entered upon his arrival in Pittsburgh.

After his arrival in the city he alleges he presented his resignation of the mission of Cameron's Bottom to Very Rev. John

Hickey, then administrator of the diocese in the absence of Bishop Domenec, which resignation he claims was duly accepted.

Father Sheehan's health, after his resignation, was soon restored, as his testimony discloses that he remained in the city for several weeks, performing "various clerical duties around, but with no assigned place, because I had resigned and my resignation had been accepted." After the lapse of this time Father Sheehan avers he procured a formal leave of absence, the exact date of which he cannot remember, and he absented himself from the limits of the diocese from an early period of the year 1871, continuously until October 1875.

On absenting himself from the diocese it appears he first visited his brother in the city of New York. While in New York city on the leave of absence for his health Father Sheehan testified to writing to Bishop Domenec for a letter enabling him to officiate as a priest in other dioceses, and that in response he received such authority, and by virtue of it and a subsequent letter of Bishop Domenec, he did exercise the functions of the ministry. He seems to have used these letters and officiated on their credit at Marquette, Michigan, Niagara Falls College, New York, and at Buffalo in the year 1871—the authority of said letters to officiate being restricted to the celebration of mass. On leaving New York he next located at Toledo, O., staying with Rev. John Quinn he asserts for months "beyond the ordinary visit of a priest;" he avers, however, that he performed during this stay all the highest and ordinary functions and duties of the priesthood, capable of being performed outside of his own diocese. Here he remained all of the winter of 1871 and 1872, and although he states the Bishop of the Diocese was absent, he does not aver submitting his letters from Bishop Domenec to the administrator of the diocese, but notwithstanding this he pronounces his services to have been rendered under the "authority of the Church." From Toledo in the Spring of 1872 he visits a friend, the priest at Waupan, Michigan, and "officiated" in the Diocese of Milwaukee. From this point he visited Lake Superior to see the Bishop of the Diocese of Marquette, whom he says refused him. So slight a circumstance in canon law, however, did not prevent him from "settling down for the summer at this point, and he remained there during said period, practically attending to one of the priest's congregations for him." Green Bay Diocese in Michigan was next

visited by him, and engaged his time for five weeks, during which, by virtue of the letters of Bishop Domenec, he asserts he was allowed to officiate about three times.

The winter of 1873 and 1874 his narrative shows he spent in the South in the Diocese of New Orleans, sojourning with a priest whose relations with his own Bishop were so delicate as to prevent Father Sheehan from asking him to procure from the Bishop the privilege of permitting him to officiate on the letters he bore from Bishop Domenec. Thus relieved from "officiating" all winter the return of spring finds his health impaired so as to cause his return home to the Diocese of Pittsburgh, first, however, branching off to Hot Springs, Arkansas, at which place he remained five weeks for his health. Here a break occurs in his narrative, and beyond being a part of the winter of 1874 in Arkansas and at Little Rock in the Diocese of Little Rock, Arkansas, and not applying to the bishop there, added to a flying visit of ten days to St. Louis, Mo., and a call by the way upon the Bishop of Covington, Ky., he recollects no more of his itinerary until his arrival again in the Diocese of Pittsburgh in the month of October, 1875.

Thus from his own story, as far as he can recall, during his four years' absence from the diocese, he was in the following dioceses in the United States: New York, Buffalo, Cleveland, Milwaukee, Green Bay, Marquette, New Orleans, Little Rock, St. Louis and Covington.

On returning in October, 1875, he found Bishop Domenec in the city. Father Sheehan did not secure, or attempt to secure, an interview with the Bishop, or in any way notify him of his return for duty. But on the contrary submitted his claims verbally for a mission to Father Hickey, and before any action was taken upon his application, Bishop Domenec, in about ten days after the return of Father Sheehan, left for Europe on important business of the diocese. After the departure of Bishop Domenec Father Sheehan verbally renewed his request for a mission to Father Hickey, who had been appointed administrator, but was immediately informed by Father Hickey that he could do nothing for him, "his hands were tied now;" "he could not without getting himself into trouble do so," although claiming at the same time to have full canonical power. Father Sheehan remained from October, 1875, until March 19th, 1876, up until the date of Bishop Tuigg's consecration as Bishop of

Pittsburgh, within the limits of said diocese, and from his testimony made no further efforts either by written or verbal applications to Bishop Domenec to procure a mission or support, and spent the fall of 1875 and following winter unemployed and in the exercise of no priestly duties. It does not appear that he felt any way aggrieved or dissatisfied at the refusal of employment in any capacity and the denial of support by Bishop Domenec during said period and before the division of the diocese. Where or how he lived or was supported during this period is not made clear by his testimony, except his positive statement that he was not living with ecclesiastics or being supported by them, or discharging any of the duties of a priest.

The Diocese of Pittsburgh was divided on or about the 19th of March, 1876, by the creation from a portion of its territory of a new diocese called the Diocese of Allegheny. Bishop Domenec was translated from the Diocese of Pittsburgh to the new Diocese of Allegheny, and was duly installed as Bishop on the 19th day of March, 1876, on which same date Rt. Rev. Bishop Tuigg was consecrated Bishop of Pittsburgh. Indiana county, in which was located the congregation or mission of Cameron's Bottom, the last place at which Father Sheehan had served as pastor, was by the subdivision assigned to the new diocese of Allegheny. Father Sheehan applied in person to Bishop Tuigg for appointment to a mission shortly after his consecration and was informed that unless he satisfied the Bishop by a probation or trial in a house of spiritual retreat of his fitness for a mission he could not appoint him to a pastorate. This condition Father Sheehan unqualifiedly refused to comply with, and immediately warned the Bishop at the interview that he would complain to his superiors about the injustice of refusing him an appointment and support.

It appears from Father Sheehan's testimony that at or about the same period Father Sheehan was seeking an appointment from Bishop Tuigg, that Bishop Domenec through, as he alleges, "mere friendship for him," was arranging to secure him an appointment in the Allegheny Diocese, and exactly why he did not do so is not explained by the testimony of Father Sheehan. Father Sheehan testifies that it would have been perfectly lawful for Bishop Domenec to have received him into his diocese, because, as he alleges, he was abandoned by his own Bishop. Bishop Domenec being so friendly to him, if

Father Sheehan's allegations are true, it seems surprising that he did not go to work, or at least procure from the Bishop of Allegheny the privilege of celebrating mass in his diocese, which he admitted was never granted him in Allegheny Diocese. But Father Sheehan's next step was to invoke redress in the Church courts for the great injury alleged to be inflicted upon him by Bishop Tuigg in refusing him an office or support, unless upon terms deemed necessary by the Bishop. Accordingly, he first visited the Archbishop of Philadelphia and informally discussed his troubles, but did not have the Bishop cited to answer his complaint. Of course, without such a proceeding regularly instituted before him the Archbishop could legally do nothing in the premises. In 1877, Father Sheehan proceeded direct to Rome and there again informally renewed his complaint against the Bishop of Pittsburgh, but never prosecuted the same.

He spent over a year in Rome ostensibly on the business of his complaint against Bishop Tuigg; but fresh complications overcame him whilst there, and the authorities of the Propaganda, at whose expense he was being maintained in Rome, admonished him to retire to a monastery and to spend his time in spiritual exercises to enable him to overcome the weakness disclosed by his life in Rome. He accordingly went into retirement at the Passionist Monastery in Rome. The Church authorities wrote three letters officially informing Bishop Tuigg of Father Sheehan's situation in Rome. Finally, in the summer of 1878, the authorities of the Church in Rome commanded Father Sheehan to return to his diocese, and informed him of their having furnished by letters their views of his case to Bishop Tuigg. Father Sheehan left Rome for Pittsburgh in September, 1878, by command of the Propaganda, which defrayed his expenses homeward, and although a month's time would be a liberal allowance for the accomplishment of the journey, Father Sheehan did not actually return to the diocese until June, 1879, thus consuming eleven months on the journey from Rome to Pittsburgh. He spent the fall and winter of 1878 and 1879, he testifies, after returning from Rome to the United States at his brother's in New York, and at his mother's house, in the State of Virginia, and failed directly or indirectly to report in person or communicate by letter the fact of his return or cause of detention en route to the Bishop's until June, 1879. He then had an interview with the Bishop, but did not pro-

pose obedience or submission, or furnish any credentials, unless his own letter of a few days before the interview to the Bishop, explaining that he had just completed another spiritual retreat at Carrollton, could be accepted as a testimonial.

In December, 1879, Father Sheehan brought the present suit against the bishop for the recovery of \$800 per annum as salary allowed a pastor by the statutes, &c., of the diocese; further claiming that he is qualified, and that he tendered his services repeatedly, and that he by the laws and usages of the Church, being under no censures, is legally entitled to the same. The three years claimed for are 1876 to 1877, 1877 to 1878, 1878 to 1879, nearly one-half of which period he has been wandering beyond the limits of the diocese, without any permit from his bishop.

The re-union in 1878 of the two dioceses under Bishop Tuigg renders it practically now of no importance whether Father Sheehan belonged to the Pittsburgh or Allegheny Diocese—one or the other being confessedly liable for his maintenance in case he became incapacitated through no fault of his own, and that he did not abandon the diocese.

It may be proper to add that the very first intimation the defendant had that Father Sheehan had a leave of absence or resigned his congregation was his testimony on the trial of this cause; he certainly never asserted such facts or claimed to have asserted to Bishop Tuigg such facts, or claimed that his documents were lost on the occasion of any of his demands for appointment or support; and it will also be observed that he does not swear to ever communicating such knowledge to the bishop at any time.

Bishop Tuigg regarded and so treated Father Sheehan just as his predecessor Bishop Domenec did, in refusing to entrust him with a mission except upon terms deemed essential by the bishop, and for a continuance of just such treatment the present bishop is sued and is denounced by him as harsh and tyrannical. Bishop Tuigg, now representing the two dioceses, has ever been ready to support and maintain the plaintiff on his complying with his duty of ecclesiastical obedience, and fulfilling the conditions deemed by the bishop under his oath of office necessary for Father Sheehan's proper and efficient discharge of his duty as a pastor in charge of the spiritual and temporal affairs of a congregation in the diocese.

PRECIPE SUMMONS

Issue summons in case to 1st Monday of December, 1879.

T. M. MARSHALL,

To J. O. BROWN,

Counsel for Plaintiff.

Prothonotary.

PLAINTIFF'S DECLARATION.

REV. PATRICK SHEEHAN

VS.

RT. REV. JOHN TUIGG,

Bishop of the Diocese of Pitts-
burgh.

In the Court of Common Pleas
No. 2, of the county of Allegheny,
of January Term. A. D. 1880,
No. 173.

Allegheny County, ss.

Rt. Rev. John Tuigg, Bishop of the Diocese of Pittsburgh, late of the county aforesaid, defendant, was summoned to answer Rev. Patrick Sheehan in a plea of trespass on the case upon promises, and thereupon the said plaintiff, by Thos. M. Marshall, his attorney, complains for that

WHEREAS, heretofore, to wit, from March 19, 1876, up to the bringing of this action, the Bishop of Pittsburgh aforesaid, defendant, is justly and legally and equitably indebted to plaintiff in the sum of two thousand four hundred dollars, with interest, being his salary for maintenance as a priest of the diocese aforesaid, at the rate of eight hundred dollars per year.

AND ALSO, whereas, the said plaintiff was ordained a priest for the diocese of Pittsburgh aforesaid, and at the time said Bishop Tuigg assumed the duties of his office plaintiff was in due and regular connection with the diocese aforesaid, and justly and lawfully entitled to his maintenance and support from the diocese, and whereas, said plaintiff has at different times made application for official employment to the Bishop, and has at all times held himself in readiness for the discharge of official duty under the Bishop aforesaid, and there is now due and owing to plaintiff the sum of two thousand four hundred dollars, as aforesaid, for salary, at the rate of eight

hundred dollars per annum, such being the legal and lawful allowance due plaintiff by the Bishop aforesaid, according to the laws and usage of the diocese aforesaid.

AND ALSO, for that whereas, the said defendant, on the day of , in the year of our Lord one thousand eight hundred and seventy nine, to wit, at the county aforesaid, was indebted to the said plaintiff in the sum of ten thousand dollars, for divers goods, wares and merchandise, by said plaintiff to the said defendant before that time sold and delivered at his request.

AND ALSO, in the further sum of ten thousand dollars, for work then and there done, and materials for the same, provided by the plaintiff for the defendant at his request.

AND ALSO, in the further sum of ten thousand dollars, for money by the said plaintiff before that time lent and advanced, and paid, laid out and expended, to and for the use of the said defendant, and at his request.

AND ALSO, in the further sum of ten thousand dollars for other money by the said defendant before that time had and received to and for the use of the said plaintiff.

AND ALSO, in the further sum of ten thousand dollars, for money then and there found to be due and owing from the said defendant to the said plaintiff, and in arrear and unpaid, upon an account then and there stated between them.

AND being so indebted, he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, undertook and faithfully promised the said plaintiff to pay him the said several sums of money in this declaration mentioned, when he, the said defendant, should be thereunto afterwards requested.

NEVERTHELESS, the said defendant, not regarding his said several promises and undertakings, has not paid the said several sums of money, or any of them, or any part thereof, to the said plaintiff, although often requested so to do; but the said defendant has hitherto neglected and refused, and still does neglect and refuse to pay the same to the said plaintiff, to the damage of the said plaintiff, ten thousand dollars, and therefore he brings suit, &c.

THOS. M. MARSHALL,
Plaintiff's Attorney.

AFFIDAVIT OF CLAIM.

Rev. Patrick Sheehan, a Roman Catholic Priest, of the diocese of Pittsburgh, being duly sworn, says: That the Bishop of Pittsburgh, aforesaid defendant, is justly, lawfully and equitably indebted to affiant in the sum of Two thousand four hundred dollars, with interest, being his salary in maintenance as a priest of the diocese aforesaid, from the 19th of March, 1876, up to the bringing of this action, at the rate of Eight hundred dollars per year.

Affiant further says, that he was ordained a priest for the diocese of Pittsburgh aforesaid, and at the time that said Bishop Tuigg assumed the duties of his office affiant was in due and regular connection with the diocese aforesaid, and justly and lawfully entitled to his maintenance and support from the diocese. Affiant further says that he has at different times made application for official employment to the Bishop, and has at all times held himself in readiness for the discharge of official duty under the Bishop aforesaid, and there is now due and owing to affiant the sum as aforesaid for salary at the rate of Eight hundred dollars per annum, such being the legal and lawful allowance due affiant by the Bishop aforesaid according to the laws and usages of the diocese aforesaid.

PATRICK M. SHEEHAN.

Sworn and subscribed before me September 23, 1879.

A. M. IMBRIE.

Notary Public.

AFFIDAVIT OF DEFENCE.

Before the subscriber personally appeared the Rt. Rev. John Tuigg, Bishop and defendant above named, who, being duly sworn, says he has a full and just defence to the whole of plaintiff's claim as sued on in this case, consisting in the following facts, to-wit:

I. Defendant denies that plaintiff is by the rules, statutes or the usages of the diocese under the charge of defendant personally or officially liable for the support or maintenance of plaintiff, or for a salary of eight hundred dollars, or for salary of any amount whatever, there existing no contract express or implied on the part of the Bishop or his diocese to support or pay a salary to a priest for any period or time he does not fulfill or actually discharge the duties of his sacred office when if any liability then exists by the statutes of the diocese, the same is incurred by the congregations or posts availing themselves of the services of such clergy. That such parishes and congregations supplied with priests and directly responsible for their support and maintenance. The express condition and provision of the statutes of the diocese on the subject of the amount of compensation allowed such priests being fixed at the maximum for pastors of eight hundred dollars per annum, if said congregation can raise or pay the same, and not otherwise; and in no event shall the Bishop or the diocese at large be held liable for failure of congregations to said compensation or any part thereof.

Deponent avers that the plaintiff in this case abandoned his official duties, and left the diocese and wilfully absented himself therefrom for a long period of time without due permission and thereby disqualified himself to discharge the duties of his sacred office, deponent also avers that since the date of affiant's induction into the office of Bishop aforesaid, said plaintiff has not removed the disqualification so brought upon himself, in the administration of affiant's predecessor as Bishop, and has refused to comply with the conditions deemed necessary for its removal by affiant.

Deponent further avers that by reason of said existing disqualification, plaintiff was not entitled or qualified to discharge the sacred duties for which he now seeks compensation and maintenance.

Deponent for further defence avers that plaintiff appealed for redress and reinstatement, or rather removal of his self-incurred dis-

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qualification, to the spiritual superiors of affiant in the ecclesiastical courts of the Catholic Church, which appeal was dismissed by the highest court in said Church having jurisdiction of said subject matter, and affiant, therefore, sets up said decree and dismissal of appeal of plaintiff as an adjudication final and conclusive on plaintiff on the subject of his disqualification, and that plaintiff being an ecclesiastic, having sought relief in said courts and pursued the same according to the laws of said Church, cannot invoke the relief of the civil court of the land to review said action or pass upon the merits of his case: plaintiff not averring of alleging any injustice or irregularity of the action or decrees of said ecclesiastical courts in his case.

JOHN TUIGG,
Bishop of Pittsburgh and Administrator of Allegheng.

Sworn and subscribed before me, this 1st day of December, 1879.
GEO. HADFIELD,
Notary Public.

DEFENDANT'S PLEAS TO THE JURISDICTION OF THE COURT.

And now, to wit: May, 1881, comes Rt. Rev. John Tuigg, Bishop of the Diocese of Pittsburgh, defendant, in person, and for further plea in this behalf to plaintiff's suit, submits the following pleas to the jurisdiction of the Court: Both as to the disability of defendant to be sued at law as appears by the pleadings in this case as Bishop of the Diocese of Pittsburgh, as well as by reason of the subject matter of said suit not being within the jurisdiction of the Court.

I. The *precipe*, writ and *narratio* show on their face this to be an action of *assumpsit* against "Rt. Rev. John Tuigg, Bishop of the Diocese of Pittsburgh," for acts alleged to be done by him by virtue of his office as Bishop, upon which action plaintiff seeks to recover from said Diocese salary and maintenance due him under the regulations of the Diocese of Pittsburgh. That the Bishop is not a sole corporation capable in law of being sued by his official title for his official action as an officer of an unincorporated religious society.

Nor is the territorial division of a church organization unincorporated and known as the Diocese of Pittsburgh, such a creation as is capable of being sued in an ordinary form of a suit at law. A Bishop in Pennsylvania since the Act of April 26th, 1855, is expressly denied the powers of even a *quasi* corporation, so far as regards succession in office or acquiring and holding real estate for church purposes.

II. The pleadings show that plaintiff and defendant are both officers of an unincorporated religious society, and that the suit is for three years salary at \$800 per annum alleged to be due plaintiff by defendant in his capacity as Bishop for the withholding of an ecclesiastical appointment to which, being fully qualified, plaintiff claims he was entitled to receive.

That defendant in the exercise of his official and judicial duties as Bishop of the territory, ecclesiastically termed the Diocese of Pittsburgh, and having jurisdiction in the Church over plaintiff, refused plaintiff this appointment, unless upon terms which plaintiff declined to accept.

That the Court to decide the questions raised by the pleadings, will necessarily have to consider and pass upon questions of church organization, church discipline and the rights and duties and qualifications of church officers and members—subjects wholly beyond the jurisdiction of the civil courts, and specially limited to and within the exclusive control of the ecclesiastical courts having jurisdiction of the parties to said suit.

Wherefore, defendant asks if the Court will have further cognizance of the said plea.

J. TUIGG,

Bishop of Pittsburgh.

AFFIDAVIT TO PLEAS.

Allegheny County ss.

Rt. Rev. John Tuigg, defendant in the foregoing pleas, being duly sworn deposes and says the matters therein alleged are true and correct as he verily believes, and that said pleas are not made for mere purposes of delay, but justly and truly for the causes therein set forth.

J. TUIGG,

Bishop of Pittsburgh.

Sworn and subscribed before me this day of May, 1881.

GEO. HADFIELD, *Notary Public.*

TERMS OF REFERENCE TO HON. J. W. F. WHITE

Under the Act of 1874, Dispensing with the Jury Empanelled in the Case. Filed at the Close of Plaintiff's Testimony, January 20, 1881.

And now to-wit: January 20, 1881: It is agreed by the parties, plaintiff and defendant, that the case on trial shall be tried by Hon. J. W. F. White, Associate Law Judge, Court of Common Pleas No. 2, of Allegheny county, under the provisions of the Act of 1874.

That the evidence already taken before the Court and jury shall be considered as taken before Judge White sitting without a jury, and either party may adduce and offer further evidence of the laws of the Catholic Church touching the duty of support as claimed by plaintiff and denied by defendant.

Also as to the territorial jurisdiction of the Dioceses of Pittsburgh and Allegheny, and the date of their division.

[Signed.]

P. M. SHEEHAN,

[Signed.]

J. TUIGG,

Bishop of Pittsburgh.

On April 26th, 1881, on resuming the trial, the offer of the testimony of Bishop Tuigg, defendant, was objected to by plaintiff, because such testimony on facts outside of canon law was inadmissible by the terms of the submission. The Court received the testimony under objections, expressing doubts, however, of its competency under the papers filed. On May 3, 1881, the following supplemental agreement enlarging the original reference was filed, so as to allow the testimony of Bishop Tuigg, received under objections, to stand and be admitted.

SUPPLEMENTARY REFERENCE.

And now, to wit, May 3, 1881: A misunderstanding by counsel for defendant having arisen as to the state of the evidence when the agreement of submission was entered into in this case. Therefore, it is hereby agreed that the testimony of the Right Rev. J. Tuigg, defendant, already in, as to his action in the case of the plaintiff when he applied for a mission and his reasons therefor, shall be con-

sidered and taken as evidence in the cause ; and no more testimony on matters of fact shall be offered by defendant, but plaintiff shall have the right to offer evidence in rebuttal or to cross examine.

CHAS. F. McKENNA,
JOHN BARTON,
Of Counsel for Defendant.
A. V. D. WATTERSON,
THOS. M. MARSHALL,
Attorneys for Plaintiff.

DEFENDANT'S POINTS.

Counsel for defendant respectfully submit to the Court the following points under the evidence of facts and canon law in this case, and claim that under the same there can be no recovery by plaintiff, and that the finding and verdict should be for defendant.

I. The Constitutional provision of separation of State and Church, and guarantee of protection to liberty of conscience and freedom of religious worship establishes a broad distinction in this State between religious and other voluntary societies, and under the canon law of the Catholic Church the form of its church government and discipline is almost as essential as its principle of religious belief, and is protected by the Constitution from interference by State Courts.

II. That in recognition of this Constitutional provision no jurisdiction has ever been conferred upon any of the Courts of Pennsylvania to entertain actions at law, as in this case, against a Bishop or a diocese for enforcement of any questions of discipline of a Church on its officers or members.

III. The plaintiff has brought an ordinary action of Assumpsit in law against defendant, designated as "Rt. Rev. John Tuigg, Bishop of the Diocese of Pittsburgh." Such an action cannot be maintained in a court of law, there being by the common law, or statute law, of the State of Pennsylvania no jurisdiction ever conferred

upon said courts whereby unincorporated religious societies, such as are the defendant as Bishop and the Diocese of Pittsburgh, can in law be sued as defendants.

IV. The form of the action being "Assumpsit," and the defendant sued individually with his official title added by way of description, no recovery can be had under the pleadings in this case, for the reason that no promise, express or implied, is claimed or proven to have ever been made by defendant to plaintiff to employ him on a mission at the salary specified, and this suit being based upon the breach of a promise express or implied no recovery can be had by plaintiff without proof thereof, all the evidence, including plaintiff's, establishing that defendant wholly refused to make any promise express or implied to plaintiff.

V. That to sustain the action of "Assumpsit" it is not sufficient to prove the existence of a moral obligation to pay a claim—a legal obligation is required to be proven; and plaintiff in this case has failed to prove either an express or implied promise to pay salary or support to plaintiff, but have proven an express refusal by defendants to undertake or promise anything to plaintiff.

VI. The plaintiff's testimony shows that the diocese of Pittsburgh is liable for his salary and maintenance on the Bishop's refusal to employ him; and if so under the law and pleadings in this case, it not appearing that the Diocese of Pittsburgh is incorporated, there can be no recovery in an action of law against it, the Bishop being but its chief executive and not invested with powers of a sole corporation under the laws of Pennsylvania.

VII. It is admitted that plaintiff and defendant are both members and officers of the ecclesiastical organization or voluntary society known as the Catholic Church; and are bound by its laws, usages and discipline; and that the matter now in controversy has arisen entirely from their official relations and acts as officers of said religious body; and as it involves purely a question of Church discipline the Civil Courts will not assume jurisdiction or undertake to pass upon or decide such question, the Constitution and laws of the State granting to all Churches in all matters of faith, morals and discipline, complete immunity from interference or supervision of Civil Courts.

VIII. The controversy in this suit is between two officers of an unincorporated Church organization, the plaintiff claiming the office of pastor or appointment to a mission and the emoluments thereof, and defendant denying his right to and qualification for same. The Civil Courts cannot legally assume jurisdiction and undertake in this suit to determine the question of plaintiff's right to the office or of the qualifications required for same by canon law, and as a consequence cannot allow plaintiff the emoluments alleged to be due a properly qualified officer or pastor of a Church.

IX. This action is brought by plaintiff as an official of an unincorporated Church organization against defendant, his official Superior in said Church, for acts of defendant done by virtue of his office as Bishop, viz.: the withholding of an appointment to the office of pastor of a congregation and the salary thereof, and that until the common official superiors of both plaintiff and defendant in said religious body, having jurisdiction of the subject matter of the controversy, are invoked to adjudicate the question of plaintiff's right to said appointment of pastor and consequent support, and the powers and duties of the defendant in the premises, the Civil Courts are bound under the law to refuse to exercise jurisdiction.

X. The question raised by this case involves directly the matter of Church organization, to-wit: the appointments to missions and qualifications of applicants for such appointment; subjects over which by the laws of the State Civil Courts have ever uniformly declined to exercise jurisdiction.

XI. By the Constitution and canons of the Catholic Church in evidence, its Bishops have been vested with judicial power to pass upon the qualifications of applicants for appointments to missions, and until the Superior tribunals of said Church organization have been applied to and the exercise of said judicial powers by a Bishop having jurisdiction of an applicant, have been reviewed or reversed on complaint or extra-judicial appeal—said judicial decision of a Bishop in refusing an appointment to an office is conclusive on both plaintiff and the Civil Court, and the latter has no right to inquire into or review the same.

XII. The evidence and proofs of canon law in this case establish that for any extra judicial "denial of justice" (*gravamen*) or "negligence," or refusal to act on the part of a Bishop in the Catholic Church, the right of an extra judicial appeal lies to his official superiors in said Church, and that the courts of said Church have full power to grant full redress to the party aggrieved, even to the award of pecuniary compensation where claimed. That from the evidence in this case such a remedy is still open in the Church for redress of plaintiff's alleged grievances.

XIII. That the existence of such remedies within the Church are binding upon the plaintiff whilst he remains a member of said Church, and until they are exhausted, plaintiff is deprived by law from recourse to civil courts for redress of his alleged ecclesiastical grievances from the officers of his Church.

XIV. That plaintiff cannot recover in this suit because of failure to establish by satisfactory evidence that the defendant as Bishop exceeded his authority or violated the canons of the Church in withholding an appointment from plaintiff until fully satisfied of his fitness.

XV. That the preponderance of proof establishes that applicants for appointment to missions or offices in the Catholic Church are obliged to furnish the Bishop with proofs of their fitness by credentials, testimonials, &c., and that the possession of said qualification is never to be presumed of any applicant so as to dispense with or overcome the necessity for proof of.

XVI. That under the evidence the oath of office of a Bishop requires him to be morally satisfied of the existence of the required qualifications in an applicant for the office of missionary before endorsing him with the sanction of an appointment to the spiritual and temporal care of a congregation; no presumption of the innocence of actual crime can be held to amount to a presumption of the actual possession of the indispensable qualities and virtues required in appointment to the office of a pastor.

XVII. That under the evidence the liability for support a pastor in the Catholic Church is the congregation receiving the benefit

of the services of a priest, and not the Bishop or the diocese. Said salary being payable by permission by retaining from revenues of congregation the amount of \$800 per annum.

XVIII. By the precepts of the Catholic Church which have universal binding effect upon all members of the Church, the command is direct to the members to contribute to the support of their pastors, and this under pain of mortal sin ; and, that priests at ordination, on voluntarily entering the service of said Church, are bound to know that on the fulfilment of this precept of the Church by the laity depends their means of support while in the ministry, and under the evidence in this case, plaintiff having rendered no services for the period claimed to any congregation, is not entitled to salary or support from the Bishop or diocese.

XIX. The evidence establishes that from April, 1877, until June, 1879, plaintiff was absent from the diocese unemployed and without permission of the Bishop, and that said period of his absence, amounting to two years and three months, is embraced in, and is part of the three years for which he seeks recovery in this case ; and this fact being undisputed the Court is asked to rule that in no event can there be a recovery of salary or maintenance for any part of the two years and three months of actual unauthorized absence.

XX. Before plaintiff is entitled to recover under the law and evidence in this case, (the burthen of proof devolving upon him) the plaintiff is required to establish by competent testimony to the satisfaction of the Court, the following facts :

1. That he was at the time of refusal of appointment a properly qualified priest in good standing.

2. That it was a violation of the canon laws of the Church for the Bishop to decline said appointment until morally satisfied of the fitness of applicant for said appointment.

3. That it was a violation of canon law for the Bishop to insist as a pre-requisite for satisfying himself of plaintiff's moral fitness for the appointment, that he should prepare himself by a life of retirement or spiritual retreat in a monastery.

4. That it was contrary to canon law for the Bishop in plaintiff's case to withhold appointment to an office because of doubts of plain-

tiff's entire recovery from certain weaknesses and temptations impairing his efficiency as a minister.

5. That plaintiff had no redress in the Church tribunals to redress his alleged grievances, and that said Church does not afford the remedy of extra-judicial appeals from the extra-judicial acts.

6. That having affirmatively established all the foregoing, plaintiff is bound to prove a promise express or implied by the Bishop, and that the relation of a legal contract exists between a Bishop and a pastor.

7. Establishing all these elements, plaintiff is bound to show continuous residence, willingness and qualifications for the period of the three years for which he claims salary and maintenance.

XXI. That under all the evidence, plaintiff has no right to recover.

ARGUMENT.

The declaration filed in this case, and which is the legal statement of plaintiff's cause of action, sets forth that both plaintiff and defendant are officers and members of the religious society known as the Roman Catholic Church; that the plaintiff is a regularly ordained priest of the ecclesiastical division of territory known as the Diocese of Pittsburgh embracing several counties of western Pennsylvania, and the defendant is the duly appointed Bishop of said diocese. The question which first presents itself for solution in the case is whether or not a suit at law may be maintained between plaintiff and defendant while they continue to hold the same common relations of members and officers of said religious society for any matters growing out of the administration of the discipline of said Church organization. If it be held that such an action will lie, then it becomes important to have defined how far civil courts will review and inquire into the questions between members of voluntary associations and Church officials and the enforcement of discipline and qualifications for pastorship therein.

On the first point, being the right to maintain such an action, we contend that by the law of Pennsylvania it is well settled that in matters of faith, morals and discipline, Churches are left free to legislate and act without the interference or supervision of the Civil Courts; and that the only class of cases where Civil Courts have ever exercised jurisdiction on Church questions is restricted to matters of property or title to real estate, the construction of deeds of trust, or the adjudicating of contests over property by divisions or secessions in religious organizations.

We therefore maintain that the Civil Court is bound in this case, finding plaintiff and defendant members and officers of a voluntary association or Church with laws, tribunals, usages and discipline, to remit the case from the Civil Court to the Church Court, where the ecclesiastical rights of plaintiff to his office and support and consequent emoluments can be adjudicated. In other words, that while plaintiff and defendant remain members and officers of said voluntary society, and acknowledge a common Superior, and the existence

of courts of competent jurisdiction therein. plaintiff is estopped from repudiating the discipline, courts and powers of said tribunals to pass upon the question of his right to and qualifications for the office of a pastor therein, and the consequent salary attached. Will the Civil Court decide that plaintiff was qualified for the appointment he sought at the time of making his application? This question will require to be first decided before the right to salary or support is reached or considered.

The qualification for an appointment to a pastorship in all denominations, as well as the Catholic Church, is properly made the subject of the gravest consideration, and positive affirmative proof of fitness is universally demanded of the applicant. The power and responsibility of passing upon these qualifications is deputed by religious bodies to be exercised in various ways. Synods, conferences, committees, examiners, and in the Roman Catholic Church, the Bishops are made the tribunals to exercise this judicial power of deciding upon the qualifications of an applicant for ecclesiastical appointments. But under no circumstances, where the existence of the qualifications for an appointment of an applicant for an ecclesiastical office, is denied or disputed by the body or tribunal to whom a religious denomination has delegated the power of passing upon and judging the same, can a Civil Court exercise jurisdiction to pass upon or decide the same question.

Not only is such interference prohibited by the Constitutional guarantee of freedom of conscience and religious liberty, because with the Catholic Church, and many other denominations, their discipline is essentially a part of their faith and doctrine; but also because such interference would be subversive of all principles of justice and equity in submitting spiritual and ecclesiastical matters to the decision of laymen, judges of the civil court, unskilled in ecclesiastical law of the different prevailing religious denominations.

No case can be found in the decisions of the Pennsylvania courts where upon the question of the standing or the moral qualifications for an appointment to a pastorship Civil Courts have been called on to readjudicate the same.

Of course it is not disputed that a clergyman having a civil contract, for instance, an express promise or a promissory note from a congregation, or a Bishop individually, for ecclesiastical services rendered, would not be debarred from suing on the same in the Civil

Courts, for there the form of the contract has been made to conform to that required by the Civil Court, and no one will contend that on ordination a clergyman forfeits or impairs his citizenship or right to sue for a legal debt in a Civil Court. In such a case no question of the discipline of the Church, qualifications for appointment to office, or powers or duties of a Bishop, would be introduced before the Civil Court, although both parties to the suit would be ecclesiastics.

In the case at bar, the question or claim of plaintiff to salary and support as a priest and pastor, depends upon a consideration and determination of three ecclesiastical questions of discipline, viz : first, the power and duty of a Bishop to pass upon the qualifications of plaintiff; second, the consideration of whether the Bishop having the right and judicial power to refuse plaintiff an appointment, exercised that duty properly; and, thirdly, the determination by the civil court of what are the ecclesiastical qualifications and proof of same required to be submitted by an applicant for an office in the Catholic Church.

On the principles contained in the foregoing, we submit the following authorities :

If, on consideration, however, the court should conclude that it had jurisdiction of the subject matter in dispute, by us claimed to be essentially a question of church discipline, status of church officers and their rights in the Church to church appointments, then we respectfully submit that no action will lie, nor can recovery be had in the present suit or form of action against defendant. Although the Catholic Church has had a diocesan existence in Pennsylvania since the formation of the Union, no instance is to be found in the decisions of her Courts where a suit at law has been entertained against a Bishop and a diocese treating them as *quasi* corporations.

The diocese is merely an ecclesiastical division of territory, and possesses no more elements of a corporation because thereof than does a Congressional District, and is equally as incapable of being sued at law as such a district. The Bishop while by the canon law vested with judicial, legislative and executive power in the diocese, is far from being a corporation *sole*, and to prevent the office from ever becoming so, the Pennsylvania Legislature in 1855 passed a stringent law prohibiting any church real estate vested in him by virtue of his office from passing to his successor in the office of Bishop and imposing as a penalty escheat to the State for violation of the Act. All Catholic Church real estate is therefore held by the Bishops in Pennsylvania since the adoption of the above Act, absolutely in fee simple, (but without any formal declarations of trust being recorded) in trust clauses usually expressed in the conveyances to the respective congregations purchasing the real estate. Thus it may safely be asserted that the Bishop of Pittsburgh does not own for church, school or charitable purposes a foot of ground, that the particular specified trust by which he holds the same is not expressed in the conveyance to him; and further, that although the Diocese of Pittsburgh may be considered rich in the number of its churches, schools and charitable institutions, it will be found on investigation that the diocese itself does not in point of fact own an inch of real estate. All the real estate and personal property held by the Bishop of a diocese is held upon and for certain well defined and specified trusts. The Bishop and the diocese are therefore incapable of being sued in law for alleged official liability to plaintiff in this suit, unless it is contended that by the pleadings it was meant to hold the Bishop individually liable or for his official action in refusing to appoint plaintiff to an office as claimed.

This construction of the form of the suit will not, we think, be seriously urged, especially in view of plaintiff's own and Rev. W. A. Nolan's testimony fixing the absolute liability for plaintiff's claim on the diocese, using the word diocese as a convertible term for Bishop.

The recent case of *O'Hara vs Stack*, 9th *Norris*, 90th *Penna. Reports*, page 477, will be urged to overcome this position, where by way of *dictum* Judge Mercur, in delivering the opinion of the Supreme Court, comments upon the relations and powers of Bishops of the Catholic Church over their priests. This was not an action at law in the civil courts; it was a bill in equity for an injunction to restrain Bishop O'Hara from enforcing an order suspending Rev. Father Stack, a priest under his jurisdiction in the diocese of Scranton. If it has any bearing on this case it is to negative the jurisdiction of a court of law.

Even the jurisdiction of the Court to entertain a bill in equity in this case between two officers of a church organization, with common superiors to redress their wrongs before applying to the civil courts, was seriously contested. The Court in assuming jurisdiction based its right upon the provisions of the Equity Act of 1836, and supplements, designating unincorporated religious societies as objects of equity jurisdiction.

The fact that no earlier or other authority than the Act of 1836 conferring equity jurisdiction over unincorporated religious associations, has been discovered to justify the interference of a civil court in a church controversy, in itself, proves how far the doctrine of the renunciation of the civil authority over ecclesiastical organizations has been accepted in Pennsylvania.

So universally is the principle recognized that until the present time not a statute has been passed conferring law jurisdiction over such voluntary associations or unincorporated religious societies upon any of the civil courts of the Commonwealth of Pennsylvania, and grave doubts would be held of the power of the legislature to pass such a statute.

Until such a law conferring law jurisdiction on civil courts over ecclesiastical organizations is enacted, we cannot see how plaintiff has any remedy at law for his alleged ecclesiastical wrongs and refusal of his ecclesiastical superior to appoint him to office. By the equity powers especially conferred upon the Courts by the Act of

1836, designating unincorporated religious societies as objects of jurisdiction, and in said Equity Courts, in a proper case, plaintiff would have his only redress for ecclesiastical wrongs or grievances of any kind. However, should the Court, in its wisdom, conclude that the suit is in proper form, and that, notwithstanding the incapacity urged that the Bishop and the diocese are not corporations *sole*, or even vested with *quasi* corporate powers, the suit at law can be maintained, then we proceed to the consideration of additional arguments to preclude plaintiff from recovery in the present suit.

First.—As to the question of the right of plaintiff to appeal in the Church and his exercise of that right. For if the Court assume jurisdiction we think there can be no dispute about the question of it being the right and duty of plaintiff to exhaust all his remedies for redress of grievances within the Church before seeking for relief in the civil courts. And if it be established to the satisfaction of the civil court, that in an ecclesiastical controversy a party has not sought relief in the tribunals of his Church, the civil court will refuse to hear said case and remit the parties to the Church forum.

It therefore becomes of vital importance in this case, before entering further into its merits, to ascertain what steps plaintiff pursued to secure redress in the tribunals afforded by the Catholic Church for redress of grievances of its members, lay and cleric. "Everybody is presumed to know the law," may be said to apply to ecclesiastics and their knowledge of the canon law of their Church. Applying this to the case in hand, if the right of appeal judicial or extra judicial exist in the Catholic Church for the redress of all and every kind of grievances, and more particularly or the redress of the complaint made by him in this suit, to wit: The denial of an appointment, he being properly qualified, and the withholding the salary for which he now sues, he was bound to know existence of such a remedy as well as to avail himself thereof.

Conceding all this, we are confronted with the question, did Father Sheehan, appeal extrajudicially or otherwise? He testified positively on his examination in January that he never did appeal, and, in fact, volunteers the information to the court, "that by law all priests are forbidden to appeal to Rome." See page 3, printed notes of testimony.

The value of his opinions as an expert on canon law, in which capacity he subsequently delivered testimony, may be judged when the decrees of the Vatican Council of 1870 proclaims the right of appeal to Rome for all members of the Church, priest or layman, from all ecclesiastical grievances. And every authority introduced on either side of the case emphatically contradicted his unsupported assertion "that priests are by law forbidden to appeal." To return, however, to the question of whether he appealed or not to the Superiors of Bishop Tuigg. Taking his own oath that he did not appeal, believing he had no right under the laws of the Church to appeal from the refusal of the Bishop to appoint him to a mission. Does he not prove himself out of the civil court in case the right of appeal existed under the laws and usages of the Church for just such a case? We affirm in this case, that a full and adequate appeal for hearing and determining in any question of Bishop Tuigg's injustice or negligence to Father Sheehan in not appointing him to a mission when he was properly qualified therefor, with full power to award pecuniary compensation for the injury, exists within the Church. We call in support of this assertion Drs. Quigley and Hecht, scholars and teachers in canon law, both ranking among the best church lawyers in the United States. Applying the facts in this suit, as claimed by plaintiff and denied by defendant, they were unanimous and emphatic in expressing their convictions that ample redress by an extrajudicial appeal exists in the Church and would, if invoked, they both asserted, have afforded ample redress for any grievances, temporal or spiritual, sustained by plaintiff had he on final appeal been sustained, and the Bishop's action reversed.

There can be no mistake about their testimony as to the existence of such remedies by recourse to the Archbishop who has jurisdiction in just such cases, they assert, as plaintiff has made out against defendant. In addition to their own opinion as canonists and scholars and as graduates of the greatest canon law colleges in Rome, they adduce in evidence standard and approved writers on canon law to sustain every proposition they affirmed on the doctrine of appeals. Craisson, Lurenus, Bouix, Schmalzgrueber, Tarquini on the Constitution of the Church and Dr. Smith's *Elements of Ecclesiastical Law*, (published in English,) unqualifiedly sustain the position they take that for the extra-judicial action or refusal to appoint plaintiff to a mission (assuming the same to be unjustly done), a complete

remedy by extra-judicial appeal exists in the Church tribunals with full power to right the wrong, even to the extent of paying pecuniary damages to the person aggrieved. Bishop Tuigg, who from his position and experience, is a most competent witness, bears testimony that such extra-judicial appeal lies from any extra judicial rulings, decisions or orders involving a denial of justice to any member of the Church, priest or layman. Rev. W. A. Nolan, offered by plaintiff as an expert on canon law, though personally disclaiming to be such, seemed with the plaintiff to be the only one to dispute the existence of such a form of appeal as an extra-judicial appeal to the Arch-bishop or Rome. Father Nolan gave evidence in his answers of strong bias against the defendant, and persistently evaded answers to questions put on cross-examination, and insisted right or wrong in adjudicating all the questions in this case, by willfully asserting it to be in the ecclesiastical court a criminal case, and to be governed accordingly by the rules and principles governing that class of cases.

No case, he averred, under any possible circumstances, could lawfully reach an ecclesiastical Superior of a Bishop, unless in the Bishop's court a trial was first had and the party sentenced. No other cases could possibly be brought before the Superior Court. The non-action of a Bishop in the matter of the appointment of a worthy qualified priest to an appointment, or his refusal to appoint, unless upon terms; or the infliction of any ecclesiastical censure or grievance without an actual trial and formal sentence, are wrongs on the part of a Bishop for which no court in the Church, not even the Pope, Father Nolan asserts, can afford the injured subject redress. "Without sentence no appeal" he perpetually asserted; all through his testimony ignoring that the law he was quoting applied only to criminal causes where a priest was accused of grave moral crime and was to be punished therefor.

Towards the close of Father Nolan's testimony, on cross-examination, it will be observed he receded somewhat from his obstinate stand against the doctrine of extra judicial appeals for redress of wrongs inflicted by ecclesiastics. He finally acknowledged Craisson to be respectable authority on canon law, and did not when the text on extra judicial appeals was read to him contradict the author. Closely pressed for proof of the assertion that Archbishops were not required as a matter of right, but simply *ex gratia* to hear extra

judicial appeals, he admitted never having seen any authorities on canon law on the point, and styled it unreasonable to be called upon to prove a negative. That Father Nolan personally has not much confidence in any ecclesiastical courts was made manifest by his testimony. But that fact proves no more against ecclesiastical courts than does the losing suitor's opinion of judges, jurors, witnesses and lawyers in a civil case when an adverse verdict is rendered by a jury in a Civil Court.

His opinion reflected on the practical administration of Church laws, and from the alleged faults of the officials of the court, he deduced the conclusions that the laws of the Church were insufficient and inadequate to afford relief in extra-judicial appeals. The very same tribunals in the Church, however, he admits are free from this criticism or charge of inefficiency and incompetency in all case of judicial sentences and judicial appeals. Thus we have the opinion of plaintiff that priests are absolutely prohibited, by the laws of the Church, from appealing extra-judicially or otherwise to Rome (see testimony, page), and the opinion of Father Nolan that extra-judicial appeals are not of right, but are matters of grace, and practically afford no redress for grievances.

It will be at once observed on perusing their testimony that these two gentlemen when called upon to fortify their opinions with authorities in canon law on these points utterly failed to do so, remonstrating that no authorities or canons could be expected to be produced to prove a negative. Was not this response disingenuous? Do they not know that all canon law writers treating on courts, tribunals, appeals, and trials and powers of officers and their jurisdiction, discuss the affirmative or positive powers and jurisdiction of such bodies, and thereby necessarily, in defining limitations of powers, establish the negative powers to be all outside of the defined or expressed limitations. Thus the limitations conferred at the creation of a civil court to try a case where the sum involved does not exceed five thousand dollars necessarily denies the right of said courts to try questions involving greater amounts. Could not a law be found to prove the negative jurisdiction of the Court mentioned, were this a question in another Court. The very act creating such a Court with limited powers would be evidence of the negative jurisdiction beyond the amount limited for its forum.

So the laws of the Church conferring jurisdiction on Archbishops to review the action of Bishops in certain specified cases define the extent of the jurisdiction of the Archbishop. Could not these two worthy canonists have produced the canonical authority conferring jurisdiction on Archbishops? And were their positions correct and they conversant with the canon law, could they not have established the negative jurisdiction of such officials by pointing to the limitations upon their jurisdiction over Bishops, and truthfully aver what exercise of authority was beyond those limitations. That they are mistaken on this subject, and that it is true as Father Nolan testifies, he never saw any books of law on the subject, is made strikingly manifest by the positive testimony to the contrary by Drs. Quigley and Hecht, who produced the standard writers of the Church, admitted by plaintiff as competent authority, and quoted entire chapters regulating and expressly providing for extra judicial appeals, not as mere matters of grace, but as absolute matters of right in all cases of extra judicial denial of justice or negligence towards ecclesiastics or layman by a Bishop.

Is Father Nolan's negative opinion based upon the assertion that he never saw any law for extra-judicial appeals to weigh against and overcome the positive proof of those who have read the law and produce and read the same in court? On page 224 Father Nolan was asked by the court, after speaking about the obligation of Archbishops to hear an appeal strictly so called.

Question. "Is that the law with reference to those complaints about the *extra-judicial* actions of the Bishop?"

Answer. "I have seen no law, sir, about that."

In proving that he never saw such a law Father Nolan proves a negative conclusively—*i. e.*—that his researches into treatises on canon law were not very deep; for Craisson, Bouix and Lurenus, Dr Smith and all establish conclusively the existence of extra-judicial appeals to Archbishops and the Pope, obligatory and to be heard and allowed all members of the Church without exception.

That Father Sheehan believed otherwise on the subject of appeals from extra-judicial actions from what he now expresses in his testimony, is apparent from his own actions in this case.

On refusing to heed the admonition of the Bishop when he applied for the appointment and was refused, Father Sheehan, knowing full well his right of extra judicial appeal, at once notified the

Bishop of his right and intention to complain of his action to the Archbishop. He did so. He testifies that after this he went to Rome to complain of the outrageous treatment of Bishop Tuigg in this very matter, and he was over a year in Rome ostensibly on this subject. If forbidden to appeal, or having no right to an extra judicial appeal in the Church, why incur so much trouble, and spend so much time and money in efforts so useless.

As a more formal argument on the points of canon law raised in this case is in course of preparation, we content ourselves with the foregoing propositions on the mere questions of jurisdiction and civil law raised by the pleading in this case.

CHAS. F. McKENNA,
JOHN BARTON,
Attorneys for Defendant.

BRIEF FOR DEFENDANT, ON THE CANON LAW
BRANCH OF THE CASE.

BY JUDGE DUNNE.

May it Please the Court:

My brothers, Mr. McKenna and Mr. Barton, have gone through the work of preparing and trying this case. At the last moment my first connection with it is that of having committed to me the relatively humble task of collecting, arranging and presenting the fruits of their labors so far as the same relate to the canon law branch of the case.

The facts of the case, important for this argument, I gather from the printed report of the trial to be as follows:

In the year 1870 plaintiff, a priest of the Catholic Church, ordained for the diocese of Pittsburgh, was established in that diocese, having charge of a congregation at "Cameron's Bottom," in Indiana county therein.

In the latter part of 1870 he voluntarily resigned this pastoral charge; resignation accepted by Rev. John Hickey, administrator of the diocese; plaintiff came to Pittsburgh, remaining there for some time, without any special charge, but officiating generally in Pittsburgh; was in poor health; sick at hospital, &c., and finally got leave of absence from Father Hickey, administrator, &c., and in the last week of 1870, or the first week of 1871, absented himself from the diocese. The leave of absence was in writing (now lost) but did not specify any particular time to which the leave might extend, nor are the contents of the leave of absence further proven. This leave of absence was not renewed. With no other permit than this plaintiff remained absent from the diocese until October, 1875. In his absence he was at New York, Niagara Falls, Toledo, Ohio, in 1871-1872; then at Waupan, Michigan; thence up to Lake Superior to Green Bay diocese, thence to New Orleans, in 1873-1874; thence to Hot Springs and Little Rock, Arkansas; thence St. Louis, Mo.; thence Covington, Kentucky, arriving in Pittsburgh in October, 1875. (Record pp. 1-9). On his return to Pittsburgh, he found Bishop Domenec in charge of the diocese, and Father Hickey acting as Vicar General, residing at Pittsburgh—plaintiff

did not report to Bishop Domenec, nor apply to him for an appointment. He says (p. 3) that he said to Father Hickey, "could I not see Bishop Domenec myself, and he said no, no; leave it all to me, and it will be all fixed."

In about ten days or two weeks after, plaintiff returned to Pittsburgh, Bishop Domenec left for Rome, and Father Hickey became administrator again, and so continued for some four or five months, until January or February, 1876; he then asked Father Hickey for an appointment (27). Father Hickey refused to act on the application (27). He was instructed by the Bishop to make no changes, except of necessity, (29), and he thought it best to make no appointments during the absence of the Bishop that he could avoid, (28).

Meanwhile the diocese of Pittsburgh was divided; the northern portion cut off, and erected into the new diocese of Allegheny, with Bishop Domenec in charge, Bishop Tuigg having been appointed for Pittsburgh, in which office he was installed, March 19, 1876, and the official promulgation of the act of division of the diocese was made on the last named day.

The said charge of plaintiff, "Cameron's Bottom," fell entirely within the area of the new diocese of Allegheny.

About the time of Bishop Tuigg's consecration, (March 19th, 1876), plaintiff applied to him, by letter, for an appointment. No action on that letter was taken by the Bishop, at that time, for that he was busy, just initiated, &c., (35). Plaintiff then later made an unsuccessful application for an appointment in Allegheny diocese, under Bishop Domenec. After this failure with Bishop Domenec, then, in the summer of 1876, plaintiff applied again, this time personally to Bishop Tuigg for an appointment (36). The Bishop knew that plaintiff had been absent from the diocese for some considerable time, and had been going around Pittsburgh four or five months, doing nothing, and so he asked plaintiff for letters, showing what he had been doing while absent from the diocese. Plaintiff said he had no letters. The Bishop told him that though he was bound to make inquiries, he felt well disposed toward plaintiff, and would give him anything he could, after a trial, but that he must go to some religious house for a year or so, and fit himself for work, (37). Plaintiff refused to do this, (36). At that interview Bishop Tuigg notified plaintiff that he was a foreigner to the diocese of Pittsburgh, plaintiff notified the Bishop that he would

see his (the Bishop's) superiors. Plaintiff made no further application to the Bishop, but went to Rome in 1877, and complained against the Bishop, (256), and got a recommendation on the subject. Left Rome in August or September, 1878, (260). Arrived in New York October, 1878.

Instead of presenting himself at once to the Bishop at Pittsburgh, he loitered somewhere about the country for eight months, most of the time, he says, in Virginia, with his mother, and then presented himself again to Bishop Tuigg, June 26, 1879, and was still refused an appointment, whereupon, on September 23, 1879, he instituted this action against the Bishop, demanding salary as a pastor, from March 19, 1876.

THE ISSUE.

Your Honor went a long way in what we think the true course in the declaration made from the bench, as reported on page 68, as to what the issue is in this case, and by what rules it must be determined.

Your Honor said there: "Our civil courts do not undertake to settle questions of ecclesiastical or canon law—we never undertake to interfere with questions of that kind, and where the fact is simply one of discipline, in the case of discipline by church authorities of one of the members, we have no jurisdiction, and do not undertake to exercise jurisdiction. It is only where the rights of property are involved and where property is at stake that the civil courts will ever interfere at all in church controversy, and it is only on that principle that the civil courts will ever take any cognizance of it. If this was simply a question of whether Bishop Tuigg had the power to discipline a priest according to the laws of the Catholic Church, we would not for a moment entertain jurisdiction. But the question is here; the plaintiff claims that certain money is coming to him, and, where he has a money claim that gives this court jurisdiction of the case as a question of property. Of course ecclesiastical law is involved in the case in this way, that he claims that he was unjustly and improperly deprived of his position, unjustly deprived of money that was coming to him from it, which he claims, and he sues to recover the money coming to him; and that is the only thing that gives this court jurisdiction of the case, as to whether or not there is any money coming to him. We do not settle these questions of ecclesi-

astical law further than the question is involved as to whether he has forfeited his money; if he has forfeited his money, then we have no jurisdiction."

It is not to be supposed that a judge holds himself to a short hand report of the off hand declarations at *nisi prius*, for a technically exact statement of his meaning. We suppose that if your Honor were to revise the reporter's notes you would not allow them to speak of plaintiff as having forfeited money which he never had, and that if he has forfeited the money you have no jurisdiction, but you would amend the notes so that the last two sentences would read something like this:

"We do not settle these questions of ecclesiastical law further than the question is involved, whether under the ecclesiastical law, recognized by plaintiff, he had or had not a just claim to this money. If, judged by these laws, he had no claim to the money, then he has no case here."

Now we submit to your Honor, that if the question of liability here is to be determined by ecclesiastical law, the construction of that law should be left to the ecclesiastical courts, best, and, in all reason, certainly the most proper one to construe their own laws. Does any one say that that would make of our civil courts mere registering bodies to give effect to decrees of ecclesiastical courts? Well! Would there be anything wrong in that? Do not our equity courts constantly send parties first to a court of law to litigate their contentions, and refuse them relief until they produce a judgment from the proper court showing that they are entitled to it? When they have done that the equity court then gives them a decree which can be enforced to a practical result. Why not fully recognize the claim of ecclesiastical courts, Protestant, Catholic, or otherwise, in this country, to determine as to their own laws in these matters? At least, might it not be done to this extent, that they should be left to act unless the plaintiff could show that they had neglected or refused to properly adjudicate.

But, however that may be held, let us proceed now to a consideration of this case, on the basis laid down by your Honor, viz., that unless plaintiff show by the canon law of the Catholic Church that he is entitled to this money he must be hence dismissed.

THE QUESTION.

The main question here then is simply this: Is the plaintiff here entitled to the whole or any part of his money demand, judged by the rules of canon law as applied to the facts of this case as above set forth.

WHAT IS CANON LAW?

Canon law, as used in the Catholic Church, comprises, in the strict sense of the phrase, those laws which emanate from the supreme and universal ecclesiastical authority. Many of these laws pertain to the divine law, both natural and positive; and although never enacted, technically speaking, by the Supreme Pontiff, they were by him promulgated in a special manner. In the broad sense, canon law comprises not only laws enacted by the Supreme Pontiff, but likewise laws enacted by inferior authorities in the Church, by Legates and Prelates, by Provincial and Plenary Councils, or even in Diocesan synods. Ecclesiastical jurisprudence, therefore, refers not only to the science of those ecclesiastical laws which were made by the Pope, but likewise to all ecclesiastical laws.

The affirmative in this case rests with the plaintiff. In the ordinary course I would have the benefit of hearing first what arguments he adduces, and might then confine myself to a reply, but as I am asked to prepare this written argument in advance of the actual hearing, I am, by force of circumstances, deprived of the usual guide for the argument of the defendant, and if I, in consequence, do not always seem to be quite responsive to the opening remarks of plaintiff, I plead this circumstance as my excuse for such unnecessary occupation of the time of the court.

SUPPORT OF CLERICS.

In all ages the character of cleric has been considered so sacred, the vocation of priests of so high and holy a nature, that it was everywhere felt they should be provided for as to all material wants, without other exertion on their part than the exercise of the functions of their sacred order. In the early ages of the Christian Church the clergy were supported solely by the free-will offerings of the people, as we learn from the "Acts of the Apostles," and other early histories. Soon churches were built and donations made to support them. Then revenues began to arise; then laws were made

providing for the disposition of this revenue. Thus we find that in the Catholic Church it is a part of the canon law, that no one can be ordained to the priesthood without some arrangement being first made to guarantee to the recipient of orders a becoming support, also no cleric has any right of support, for that he is a cleric, except such as is provided for him by canon law.

This right of support was originally called *titulus sustentationis*, title of sustenance. In the *Roman Pontifical* (a digest of laws, &c.), this designation was abbreviated to *titulus*, simply, that is *title*. *Reiffenstuel Jus. Can.*, vol. 1, p. 447, No. 69, citing *Can. Neminem* and *Can. Sanctorum*, also Council of Trent, Sess. 21, ch. 11, *de Ref.*

There are two kinds of title, viz: Patrimonial and Ecclesiastical. Patrimonial is that of sufficient individual property owned by the person ordained. Title Ecclesiastical is subdivided into *title of Benefice* and *title of Poverty*. To these may be added title of *Common Table*, *Service of the Church*, *Sufficiency*, *College* and *Mission*. 1 *Reiffenstuel*, pp. 448-449, Nos. 71, 72, 73 and 76; also, *Instructio Propaganda*, April 27, 1871; also see Koenig's *M. T.* vol. 2, p. 213, *et seq.* Title of poverty is the title by which regulars, or professed religious, are ordained. "The title of *Mission*, by custom, is used for those who devote themselves to the service of Apostolic Missions in places in which such is the state of affairs that the common law of the church concerning those things which regard the prerequired title for holy orders cannot be entirely observed. Those who are ordained with this title receive their necessary support from the Apostolic Ministry in the mission to which they are attached." *Instructio Propaganda*, April 27, 1871, cited in Koenings, vol. 2, p. 214, No. 1522, Sub. Sec. 3.

"Priests can not be ordained without a title, whether it arise from patrimony, benefice or religious poverty. In this country, by permission of the Holy See, secular priests, almost without exception, have thus far been ordained to the title of Mission. But as the five years for which the faculty of ordaining to this title have passed, we think that the Holy See ought to be asked to again grant this faculty to the Bishops of these Provinces, if it seem good to the supreme pontiff. (a).

We also think the Holy See ought to be asked to permit those ordained in future to acquire the title of Mission without being

obliged to bind themselves by oath to serve the missions perpetually. (b).

(a). This faculty the Supreme Pontiff benignly granted, Jan. 24, 1868, to all the bishops of the United States, up to the term assigned each one for the exercise of other faculties. See Decree of Sacred Cong. Prop. p. cxlvii and cxlviii.

(b). The Sacred Congregation of the Propaganda Fide will probably treat of this petition in the Instruction promised us regarding ordination to the title of Mission.

Second Plen. Coun. Balt. p. 170, No. 323, with foot notes.

Sacerdotes sine titulo ordinari non possunt sive is ex patrimonio seu beneficio seu paupertate religiosa oriatur. Apud nos S. Sedis indulgentia, seculares sacerdotes nemine fere excepto, ad titulum missionis, hucusque ordinati fuere. Quum vero quinquennium, per quod facultas ordinandi ad hujusmodi titulum concessa est jam effluxerit, censemus S. Sedi supplicandum esse ut eadem harum provinciarum episcopis iterum concedatur, si Summo Pontifici visum fuerit.

Hanc facultatem: "Singulis Foederatorum Statuum Episcopis, usque ad terminum unicuique eorum pro aliarum facultatum exercitio assignatum." S. Pontifex benigne concessit, 24. Jan. 1868. Cf. Decretum II. S. C. de Prop. Fide, p. cxlvii et seq.

Hac de postulatione forsitan pertraetabit S. Cong. de Prop. Fide in promissa nobis circa ordinationem. Titulo Missionis Instructione vide Instr. Gen. supra. Con. Plen. Balt II. p. 170, No. 323.

Supplicandum quoque censemus, ut liceat ordinandis in posterum *TITULUM* Missionis acquirere quin jurejurando se obligare teneantur ad perpetuo Missionibus inserviendum.

"Since by apostolic indult, secular clerics, for the most part, have been usually ordained in these United States to the title of mission; we admonish Bishops to elevate to sacred orders by this title only those who, in the judgment of the Bishops, appear worthy of the holy missions, or who will otherwise serve the progress of religion; having beforehand sworn that they will perpetually labour in the Mission to which they shall be assigned." *2d Plen Coun. Balt.*, p. 65-66, No. 89.

Cum ex Apostolico indulto consueverint plerumque clerici saeculares ordinari in his Foederatis Provinciis titulo missions *monemus* episcopos ut eos tantum eo titulo ad sacros ordines evehant qui idonei sacris missionibus videantur, vel alias religionis profectui episcopi judicio inservituri emissio prius jurejurando se perpetuo missioni cui deputantur operam daturos. Con. Plen. Balt. II. p. 65-66, No. 89.

This title of *Mission* is the title by which all secular clergy are ordained in the United States. *2 Con. Plen. Balt.* 170-323. To go back to the old phraseology, this is their *title of sustenance*, showing that their right of support is a right to be maintained from the mission to which they are attached.

There is no canon law in force in the Diocese of Pittsburgh guaranteeing any particular amount of salary or of support to any priest therein. Priests have no right of support except such as provided by canon law, therefore no priest in the Diocese of Pittsburgh has any right to any fixed amount of salary.

Father Hickey, testifying for plaintiff, says: "The laws of the diocese require a priest to receive in compensation for his services \$800 a year." *Report*, p. 30. And some other witnesses for plaintiff testify to the same effect.

In reply to this I say, first: there is no law to that effect at all. Second: there is a decree of the Bishop on the subject, but the witnesses mistake the effect of the decree.

The canon law obliges the faithful in this country to contribute to the support of their pastors.

"All ought to be persuaded of this, that every one ought to contribute his share, lest priests (and religion) be deprived of the necessary support. But those who through avarice, refuse to contribute, (when priests are deprived of the necessary support, or when the other faithful are over taxed,) appear to be guilty of mortal sin, and unworthy of the sacraments; for they violate the law of Christ, the Lord, regarding the support of the ministers of the gospel, and they expose themselves and others to the loss of salvation." (1).

Kenrick, *Mor. Theol. Tr* 4 p. 2, No. 75.

(1). *Id* * * * * omnibus persuasum esse debet, oportere, ut Singuli pro sua parte aliquid conferant ne sustentatione necessaria indigeant sacerdotes." "Sed quamdiu *nulla certa lege* onus injungitur et definitur, non audemus peccati, mortalis damnare eum qui omittit ac quam portionem conferre, puotis non est periculum ne sacerdotes ea de causa indigeant, vel alii fideles nimium graventur. Illi autem qui prae avaritia recusant quid dare in iis quae indicavimus adjunctis, videntur graviter rei et indigni venia sacramentali; violant enim legem Christi Domini de ministrorum Evangelii sustentatione, et se aliosque obijcium discrimini salutis." Kenrick, *Theol., Mor. Tr.* 4, p. 2. No. 64.

In this country the contributions are generally made in money. The decree of the Bishop in this matter of salary goes no further than this: it *permits* the pastor to retain of these contributions, annually, the sum of \$800 if he shall receive so much, but in no way does it guarantee the pastor that he shall receive that or any other sum.

The decree is as follows: "Considering the state of affairs, we permit that the stipendiary allowance of pastors be increased two hundred dollars, and that of assistants one hundred dollars; so that

pastors may receive eight hundred dollars, and assistants four hundred dollars. But if the pew rent be not sufficient to amount to this sum it shall be allowed to take from the offerings of the faithful as much as may be required to complete the stipendiary allowance. If, however, this allowance appear to any priest insufficient, he shall be permitted to approach the Ordinary, and make known to him whatever just reasons there may be to increase the fixed stipend. *Statutes of Pittsburgh Diocese, Diocesan Synod, 1844, p. 37, No. 9.*

See appendix to report, (p. 358,) for original latin of this decree.

There is no law or decree of any kind coming from any source, which obliges the Bishop or the diocese to secure to the pastor said or any other sum of money as salary or compensation for his services.

Therefore, even if plaintiff here had been in the discharge of parochial duties, had been duly qualified, and had duly rendered all proper service, he could not maintain an action of this kind, for a salary certain in amount, as against this defendant or any other person.

SUITABLE MAINTENANCE.

While no priest, apart from a special contract, has a right to any fixed salary, absolutely, his right in that respect being merely a permission to retain a certain amount of the offerings of the faithful, if such offerings happen to be given to him, it is true, nevertheless, that every priest ordained to the title of mission, and affiliated to a diocese certain, has an absolute right to suitable maintenance, whether in charge of a congregation or not, so long as, to use the popular phrase, he remains in good standing. By good standing is meant *idoneitatem*, which involves both negative and positive requirements. As to the negative ones, it involves freedom from vice and censure; as to positive ones, it involves possession of the canonical age, science and virtue.

1, Reiffenstuel, p. 353 to 358; also, *id.* p. 475, Nos. 6, 9; also, *id.*, p. 476, No. 11; also, 3 Reiff., p. 144, No. 41; also, Craisson, *Man. Tot. Jur. Canon*, vol. 1, p. 233-235.

But who is to provide this maintenance? Answer. The members of the church, resident in the diocese. It is one of the laws of the Catholic Church that the members thereof are bound under the most severe spiritual penalties to provide for the maintenance of their priests. *Kenrick Moral Theology Treatise, part 2, No. 64.*

Can the priest sue the Bishop for this maintenance? In a certain way, and under certain circumstances, he may; properly, we say, in the ecclesiastical courts alone, properly, your Honor says, in the civil courts as well. A Bishop of the Catholic Church, in charge of a diocese in this country, has a two-fold charge, spiritual and temporal. As to his spiritual charge, we pass that for the present. His duty in temporal matters is that of trustee for the church, that is for the people of his diocese, who are united with him in religious faith and practice. As such trustee he holds in his name, or in his hands, such property as the people of his diocese place there. As such trustee he holds such property upon the trusts on which it is given, and if civil courts can lawfully act on him at all as such trustee, it can only be the equity courts, compelling him to execute such trusts. It is the duty of the people (and when I speak thus of people it will be understood I speak only of the subjects of the Bishop,) to maintain the clergy of the diocese directly, or to provide a fund for that purpose. If they choose they can make the Bishop the depository of that fund. If such fund is given to him he becomes a trustee of that fund for the purposes intended by the contributors thereto. The only way in which, even in the eye of the civil law, a priest could get a standing in a civil court, to sue his Bishop for maintenance, would be by a bill in equity, showing that there was a fund for maintenance in the hands of the Bishop; that the Bishop held a part of it in trust for complainant, who was entitled thereto, &c., and thus compel execution of the trust. There is no such fund in the diocese of Pittsburgh, (Nolan, p. 197,) and probably not in any diocese in this country. There has not yet, in the history of the church in this country, arisen any need for any such fund, viz: a fund to provide maintenance for priests in good standing, priests possessed of canonical age, science and virtue, for whom the Bishop cannot provide fields of labor, where they can find occupation and sustenance as well. The great trouble of the Bishops has been that they could not get as many priests of that kind as they wanted. It may happen for a short time, that a duly qualified priest cannot be immediately provided with a mission, but the cases are so rare, and the period of waiting so short that the only difficulty experienced by such priests is the social one of being compelled for the most part to discriminate among their brother priests as to what offers of hospitality they will accept. Father

Nolan, testifying for plaintiff, says that there is a law of Baltimore, which makes it obligatory on the Bishop to provide such a fund, and to sustain his declaration to that effect he pretended to translate decree No. 90, of the second Plenary Council of Baltimore, and I must admit, that, *as he translated it*, it did read very much as he claimed, but the original does not read so. I give Father Nolan's incorrect translation and a correct translation side by side here, with the original in a foot note, that the court may see several things, among them, what is really said by this decree.

ACTS, &C., 2d PLEN. COUN. BALT., No. 90.

Father Nolan, p. 197.

Answer. I will translate it, giving it a literal translation:

"In order that priests may not be compelled, to the great disgrace of their order, to beg or to be in want, we exhort the Bishops to admonish the faithful under their charge of the duty incumbent on them of supporting, of giving a suitable support to those priests, to the priests especially who are worthy, but who through sickness or some other accident they be not able to discharge their duty; and so that affliction might not be added to their affliction, let them take care that there be afforded such priests such support or assistance as they may deem necessary. And that this assistance should be afforded by the faithful; but if the congregation of the priest who was sick, or otherwise disabled, served be so poor as not to afford means or support of this kind, we exhort the Bishops that by the best

Correct Translation.

Lest priests to the dishonor of their sacred order be compelled to beg or suffer want, we exhort Bishops to admonish the faithful of the obligation which binds them to provide a becoming support, for those especially who labor in preaching to them. But, if through sickness or other cause they become no longer able to exercise the sacred functions, lest affliction be superadded to affliction, let the Bishops take care that such support as they judge necessary be afforded them by the faithful whom they have served. But if the congregation served by the priest now sick or otherwise incapacitated be so poor as not to be able to afford such support, we exhort the Bishops to excite, by such means as they can, the charity of the faithful and of the other priests to assist them. We most earnestly desire that the Bishops in all the dioceses, with the co-operation and

means in their power they may excite the other priests and faithful to afford them to show them charity; but we greatly desire that in every diocese the Bishops, as soon as they possibly could, having taken the advice and the counsel of the priests, and assisted by the priest, they should enact or determine some certain method—certain and fixed method—by which provision should be made for sick or old priests, or for priests otherwise disabled; but unworthy priests, or those who refuse to obey the legitimate authority of their Bishop, or who refuse to contribute money to this general fund, we do wish that this decree should be made of no benefit.”

counsel of their priests, will, as soon as they conveniently can, establish some sure and lasting means for the support of those priests who are infirm, or advanced in years, or otherwise incapacitated. But we do not wish this decree to be of any benefit to unworthy priests, or those who have resisted the lawful authority of their Bishops, or who refused to contribute to a general fund of this kind. (a).

(a). “Ne Sacerdotes, cumsacri ordinis dedecore, mendicare, vel egestatem pati cogantur, episcopos HORTAMUR, ut fideles moneant muneris quo tenentur, eis praeclique qui in verbo et doctrina laborant, congruam sustentationem suppeditare. Quod si aegritudine, vel casu aliquo jam non valeant, sacris fungi muneribus, ne afflictis addatur afflictio, curent ut ea subsidia quae necessaria judicaverint, ipsis a fidelibus quibus inservierint subministrentur. Si autem Congregatio, cui inservierit sacerdos aegrotus vel alius impeditus, fuerit adeo inops ut nequeat hujusmodi subsidia suppeditare, episcopus HORTAMUR, ut, ea qua fieri possit ratione, aliorum sacerdotum et fidelium charitatem ad iis succurrendum excitent. CUPIMUS autem maxime ut in singulis diocesibus episcopi quamprimum commode potuerint, sacerdotum ipsorum adhibito consilio et opera, certum quemdam modum et stabilem statuunt, quo infirmis vel aetate provectis vel alias impeditis, providatur. Indignis autem, tem sacerdotibus, vel qui legitimae suorum episcoporum auctoritati repugnauerint, vel qui aes ad fundum hujusmodi generalem conferre recusaverint, hoc decretum prodesse nolumus.”

Acta et Decreta Con. Plen. Balt. II. p. 66, No. 90.

On this it may be remarked, first, that Father Nolan is wrong in speaking of this as a law; it is only an *exhortation*. Second, that Father Nolan is wrong in translating, in the beginning of the article, “of the duty incumbent on them of supporting, of giving a suitable support to those priests, to the priests especially *who are*

worthy." This translation is not merely incorrect; it is not merely misleading; it is absolutely an importation of foreign matter into the text, and is remarkable that the foreign matter thus imported is exactly that which plaintiff needs to sustain his case, on his own theory, that though not engaged in the labor of preaching he is one of those "who are worthy." How strange that the idea expressed by the words, *eis praeceque qui in verbo et doctrina laborant*, "for those especially who labor in preaching," should, when passed through the mind of the distinguished canonist from Butler, emerge in a state representable only by the words, "to the priests especially *who are worthy*." Third.—The exhortation amounts simply to this: First, the Bishops are exhorted to admonish the faithful of their duty to support those who labor in preaching for them. Second, that even if the pastor becomes incapacitated by sickness or other cause, the congregation which the pastor had served should continue to support him, but if they were unable to do so the Bishop should try to excite others to aid him. Third, an earnest recommendation to the Bishops and priests to provide some means for the support of infirm priests, but always only those in good standing.

It will be seen, therefore, that even if plaintiff here had been all the time a priest in good standing in the diocese of Pittsburgh, he has no ground on which to maintain an action against the Bishop for support. A priest in good standing is entitled to support, as a matter of strict right, binding on the conscience of the people of the diocese, but he is entitled to demand it only according to canonical laws. The canonical law, so far, has in this country given only the right. It has not yet provided a remedy, in case the right is withheld, unless, perhaps, by interdict or excommunication, as penalties to be inflicted upon culpably neglectful people.

There is a maxim in law, that there is no right without a remedy. But maxims are often misunderstood. They are short, pithy expressions, embodying a general truth, but which in some cases, though technically correct, are practically worthless. They are sometime of that class of saying which "palter with us in a double sense and keep the word of promise to the ear but break it to the hope." We have the legal phrase, "*damnum absque injuria*," a damage without injury, an absurdity in one sense, yet sound enough in another.

Will any one undertake to say that it is the province of civil courts to declare: "Well, these priests are citizens. They have a

right to support from the people of the diocese; their church has given them that right. The Bishop has power to make a law affording a remedy. If the Bishop fails to do it we will do it ourselves. The ministers of churches must be supported. If the authorities in their churches will not enact laws sufficient to that end we will do it for them. If the people will not contribute voluntarily we will see that they do it forcibly." However it may be with other denominations, the Catholic Church certainly does not ask any such aid from the state. The priests in good standing in the church do not ask such interposition of the civil power on their behalf. Those priests, while citizens of this country, are all of legal as well as canonical age. They knew the law of the church before they entered the priesthood. They entered that state of their own free will. They are under no restraint now except that of their own sense of duty. It is simply an impertinence for any one outside of their community to interfere with any of their interior regulations on any other plea than that there is something in those regulations contrary to the law of the land.

Catholic priests are in one sense, the only sense in which the civil law has any right to consider them, simply citizens who have chosen to rely for their support upon the free will offerings of their people. A catholic Bishop is in the same sense simply one chosen from among them to preside over them. *Episcopal*, meaning an overlooking, an over-seeing, from Greek, *epi*, over, and *skopein*, to look. These Bishops are entrusted with a two-fold administration, viz: spiritual and temporal. In the spiritual order, Bishops have a two-fold power: first, that of orders, which relates chiefly to the administration of sacraments, and the performance of pontifical consecrations; secondly, the power of jurisdiction, or that power by which they govern the diocese. "*In quovos Spiritus, Sanctus posuit episcopos regere ecclesiam Dei.*" *S. Paulus*.

Take heed to yourselves, and to all the flock, over which the Holy Ghost hath placed you Bishops, to rule the Church of God. *Acts*, 26-28.

(Craisson Man. T. J. C., vol. I, p. 488.) Bouix, de Episcopo, vol. 1, p. 30, *et seq.* In the temporal order it is the duty of the Bishops to administer the temporal possessions of their diocese. Craisson, vol. 1, p. 562 *et seq.* II. Plen. Council Balt., p. 111-121. Bishops have power to call upon their people for contributions for

various purposes. Craisson, *Man. To. Jur. Can.*, vol. 1, p. 564 *et seq.* Reiffenstuel *Jus Can.*, vol. 5, p. 138, *et seq.* Doubtless among them, for the support of priests not provided with congregations, but, the exercise of this power rests in the discretion of the Bishop, a sound discretion, of course, but reviewable only by his spiritual superiors. As the matter stands now in this country to support of non-employed catholic priests, who are in good standing, they arrange the matter amicably among themselves by helping one another as needed. If any one among them is not satisfied with that arrangement, the only remedy he has now, outside of the ecclesiastical courts, where he might possibly press a complaint as to lack of legislation on the subject, is to do as plaintiff here has done, practically withdraw from the community, and live independent of the church.

PART SECOND.

We come now to a consideration of plaintiff's case, viewed not from the position plaintiff claims to occupy, but from the position we claim he occupies.

In considering this case the court found it necessary to call in the aid of experts in canon law. As it will be necessary for us to consider the testimony of these experts, it is quite important for us to understand first, as well as we can, the comparative and relative value of this testimony. It is easy to obtain the name of expert, but to be expert in fact is another and very different thing.

Defendant has first in his behalf, as an expert in canon law, the Rt. Rev. Dr. Tuigg, Bishop of the diocese of Pittsburgh. As he is himself the defendant in the case we will not dwell on his acknowledged learning, ability, and personal character. It is sufficient to say that he is a Bishop of the Catholic Church in the United States, a country where the Holy Father is left perfectly free in the matter of Episcopal appointment, and, therefore, presumably advances no one to that high dignity except such as are distinguished among their fellow clergymen, not only for morality, but for the possession in a high degree of those intellectual qualifications necessary for the proper discharge of the duties of their office, among which a knowledge of canon law is one of the most important.

We then have Dr. Quigley and Dr. Hecht, both of them men who bring their title of Doctor from the highest Colleges of Rome.

Your Honor will remember the grand sweep of mind of the first; the loftiness of language, the accuracy of reference, the eloquence of expression, the refinement of discrimination, which characterized his testimony. Of the second, the calm, steady march of the trained logical mind, the clear statement of law, the cool expression of judgment, the luminous exposition of the real point at issue,—polished scholars both of them, as even from the printed report I can see that your Honor did not fail to note. We have also Father Wall, for eleven years President of St. Michael's Seminary in this city, an institution for the training of candidates for the Catholic priesthood.

To oppose this array of learned men plaintiff brings, aside from his own testimony, only one witness, Rev. Mr. Nolan, who gives this account of his studies: "I commenced my studies in a boarding school in the city of Waterford, Ireland; went next to a college in Waterford for about a year and a-half; then studied theology, I think, two years; then was in Genoa less than a year; then not quite a year in St. Michael's Seminary, Pittsburgh; then ten months in Cincinnati. Did not study canon law any at St. Michael's, nor at Cincinnati. The knowledge I have of canon law is, I may say, wholly derived from what I have learned *since I left college*, and since then I have been actively engaged in a mission in this diocese. All of the time I have had one church or mission to attend, and sometimes two, and sometimes three." *Report*, pp. 213-215.

To give some idea of Father Nolan's method of treating these grave questions I cite some of his answers from the published report.

Being questioned about *latae sententiae*, he answers, p. 165: "In fact, a person taking this, what the book says violating this law, is referred to the Pope for dispensation, for ordaining a man without a title on the condition that that man, or the person so ordained, would not ask him for support. That is an offence on the Bishop's part for which the suspension *ipso facto* is reserved for the Pope.

* * * * *

Latae sententiae. That means, your Honor, that when the law attaches anything to a thing it is said to be suspended *latae sententiae*; that is, instead of saying "If you do so and so, I may suspend." But when he did such and such a thing, if he did so and so, a certain penalty is attached to it. * * *

Witness being shown a volume of the "Corpus Juris Canonici," and asked to tell what it was, said it was "issued by order of Pope Gregory XIII., published 1683, a very old book." (p. 166.)*

* * * * *

Q. By whom? A. By one of the Popes.

Q. Which one of them?

A. It refers to a mark here, it refers to a foot note under the letter E, he says, page 20, the same title in the first compendium, that is what he says. (p. 166.) * * * *

Q. Do you know what it refers to? What book it refers to prior to this one? A. Really, I can't say. (167.)

* * * * *

Q. You couldn't tell how long the authority cited there was the law of the Church?

A. Right on the spot now I couldn't mention it. I might not be able to give the correct chronology, but if I look at Rohrbacher I could find it. (167.)

* * * * *

A. Saint Ligouri, as a theologian, has the special approbation of the Catholic Church to such a degree that no other theologian is allowed to contradict him without saying "by your leave," or "by your permission," or some such respectful word. (168.)

* * * * *

Q. Which council was it?

A. I don't think now. *I don't remember whether there were more General Councils of Lateran than one.* I know, probably, likely there were, but I know the first General Council of Lateran was held about the year 1215, unless I am mistaken. It is a matter of ecclesiastical history or chronology." (169.)† * *

A. * * "But supposing, for instance, that a Bishop should suspend a man without right, thinking that they can do everything, should write letters to the priest this way, and say, "your faculties

*Pope Gregory XIII. was dead a hundred years before that time, and the "Corpus Jur. Can." was compiled by order of Gregory IX., who ruled from 1227 to 1241; a little mistake of some 400 years only.

†(NOTE.—There were five General Councils of Lateran, though this *expert* in canon law didn't know whether there had been more than one or not, but he knew one thing certain, the *first* one was held in 1215! Your Honor, he didn't guess within a hundred years of it. It was in 1123.)

is hereby withdrawn, please leave that house where you are." If such priest went to the Bishop and asked him, "what did I do?" He won't tell you. (192.)

* * * * *

Q. Isn't there a well defined form of complaint or action against the Bishop in an extra-judicial manner, requiring the Archbishop to give a citation to the Bishop, &c.? * * *

A. I never saw a book, or the law.

Q. Do you know whether the laws of the Church provide that remedy? A. I don't, sir; I don't think they do, sir.

Q. Do you say now, sir, that simply because you have not seen them that no such laws exist?

A. I can't say that, sir. It might exist and I never have heard of it.

Q. I am not asking you whether you have seen it. I am asking you whether you know that the canon law allows such a thing to be done? A. I don't know. (194.)

* * * * *

Q. (221.) Suppose that the Bishop decides that you do not belong to this diocese, and orders your removal to the diocese of Cincinnati, and says you do not belong to his jurisdiction, would you not have an appeal from this decision of the Bishop to the Archbishop?

A. I would not mind the Bishop at all, and then it would be for the Bishop to show to the tribunal that I didn't.

Q. Suppose that he decided you didn't?

A. Then I wouldn't mind it.

Q. What would be the consequence then?

A. None that I know of.

Q. Wouldn't you be in rebellion against your Bishop?

A. I would not, sir. Rebellion always presupposes proper authority. No man has a right —. (Interrupted). (221).

The witness himself says he is not an expert in the sense that experts are generally considered to be versed in canon law. (Record, p. 12).

He appears here on behalf of the plaintiff in a contention which the latter has with his Bishop.

The witness himself is also at war with his Bishop, his sacerdotal faculties being now taken from him, to which fact he alludes in his testimony in his first answer on page 165.

I don't feel it necessary to criticise very closely Father Nolan's declaration as to what is canon law on any given point, as he seems to be entirely indifferent as to fortifying his opinion by any authority, believing, possibly, that a knowledge of canon law comes by nature, as was remarked of reading and writing by a certain character in Shakespeare.

It is said that wisdom is humble. That your Honor may note how, beginning the study of canon law after leaving college, and pursuing it while actively engaged in discharging the work of one, two and sometimes three missions, makes a man gentle and humble and wise, note this from Father Nolan's testimony, page 227 :

Q. "You said this morning that book (Craisson) was recognized as a standard authority?

A. "He is a good authority.

Q. "Do you know how he divides appeals?

A. "I suppose not in any different way from the other canonists.

Q. "Can you give us his idea?

A. "Give me the book.

Q. "I thought you had read it?

A. "It is not necessary; I can apply the language: '*I can probably give my own definition of it as good as his.*' (Italics mine). Craisson is a very fine author, but all law is not confined to books." 227.

Your Honor has noted how this bushwhacker in canon law, being asked: "Suppose the Bishop decided you did not belong to his diocese?" replied: "I would not mind the Bishop at all."

The learned Dr. Quigley, a canonist, from Rome, and for years a *Professor* of canon law in this country, being asked (page 114) as to obedience: "Suppose the Bishop would tell you to black his boots, would you do it?" replied: "I would do it, and I am not quite sure that I am worthy to do it. * * I would rather be a good boot black than a bad priest."

* * * * *

"Knowledge is proud that it knows so much.

Wisdom is humble that it knows no more."

* * * * *

The only point in canon law on which plaintiff claims to speak as an expert is on that of *title*.

With these few remarks as to the character of the expert testimony we will take up now our third proposition.

Plaintiff was not entitled to an appointment as a priest in the Catholic Church, with the care of souls, when he made his application in 1876.

The office of priest in the Catholic Church is the highest office possible for man to hold. Bishops, Archbishops, Cardinals, Legates, and even Popes, are all on the same level with the humblest missionary priest in all that constitutes the sacerdotal powers—in all that essentially distinguishes them from all other men. The priest is the anointed of the Lord, and the Pope is not different. In ministering to the faithful the true priest is *Alter Christus*, and the Pope claims no higher title. The "Great Master" said once to his Apostles: "As my Father sent me so I send you," and as He sent them, so do they, in their successors, send others, and those sent are all to be as other Christs to men in need of salvation. The souls of men are in their care. They deliver the word of God. Wherefore it is required that they be not as other men, but that they be models for other men to imitate. They must be of stainless life, marked virtue, and acknowledged sanctity. On the Bishop of the diocese is laid the fearful responsibility of selecting these ministers of God and commissioning them for the discharge of their holy work.

For his guidance in a matter of such grave responsibility, the Bishop has certain regulations of canon law which he is in duty bound to follow.

In order to fill an ecclesiastical office a person must be canonically appointed to it. St. Paul's Epistle to the Hebrews, ch. 5, v. 4; John, ch. x. i.; Council of Trent, sess. 23, ch. 7; Craisson, M. T. J. C., No. 371.

The power of appointment to parishes in the United States is vested solely and exclusively in our Bishops.

I. Provincial Council of Baltimore, Nos. 1, 2.

II. Plenary Council of Baltimore, Nos. 112, 123, 124, 125.

Three qualifications are required in persons to be appointed to ecclesiastical offices. First, age; second, purity of morals; third,

science or learning, or, as given by an eminent authority, "Aetatis maturitas, gravitas morum et litterarum scientia." Reiffenstuel, *Jus. Can.*, vol i, p. 353, No. 204.

The age required for promotion to orders and benefices is twenty-four, for promotion to the mitre, thirty years. By dispensation for this country, one can be ordained priest and appointed to the charge of a parish at twenty-two or twenty-three.

The degree of morals required is to some extent set forth in the decrees of the Second Plenary Council of Baltimore, as to which of course two things will be admitted.

1st. That priests know of these requirements, and know that they must be able to comply with them in order to validly demand an appointment from a Bishop.

2d. That Bishops know of these requirements and are bound by their oaths to appoint no person to the priestly charge, who in their opinion does not reasonably fill the requirements demanded.

There are many declarations on the subject in the acts and decrees of the Second Council of Baltimore, but lack of time prevents me from presenting them as fully as I wish. I cite this:

"The priest must be stainless and holy. It is necessary for him to so regulate his life and morals that he be a teacher to others, not only in preaching but also in setting an example of the virtues. It does not become the minister of Christ to be as the Scribes and Pharisees of old, whose doctrine indeed was good, but whose works were evil. The virtue of a priest must abound more than that of these." Decrees 459, Council of Baltimore, II Plen.

"What Christ did, priests ought to do, and by the same power, in the same way, with the same means, and unto the same end. * * Let them make use therefore of natural means, namely of all their powers of soul and body; but much more must they bring to their aid, supernatural powers, viz: *acquired virtues*."

Con. Plen. Balt. II, p. 231, Nos. 456 and 457.

Speaking of the integrity of morals required, Craisson says: "And indeed (there is required) such integrity of morals as excludes vice (and especially such as generates scandal) and is adorned with virtues sufficient to edify. Therefore, all those are excluded who are irregular, excommunicated, or under other censure, disreputable, etc." Craisson, *Manuale*, vol. 1, p. 234.

Rule 87 of the law reads: "*Infamibus portue non pateant dignitatum*—the doors to dignities shall be closed to the infamous." * * Here infamy is described by the author as consisting in the injury of one's good name. Reiffenstuel, vol. I, p. 357, Nos. 226 and 227.

"Again freedom from censure and from irregularity is required." Reiffenstuel, vol. 1, p. 347, No. 221.

Irregularity is a canonical impediment to the reception of order or to the exercise of orders received. Craisson, vol. 2, p. 175.

Such are some of the requirements. Now it has been argued that because the plaintiff was not under actual censure when he left the diocese, in January, 1871, it follows necessarily that on his return in October, 1875, after an absence of more than four and a half years, the Bishop is bound to consider him fully qualified in all respects, to lawfully demand and receive an appointment, unless formal charges are preferred against him, a trial had and judgment pronounced against him; that the Bishop had no right to call for any letters, proofs or explanation of any kind, as to where plaintiff had been or what he had been doing during all of these four and more years, but was bound to, at once, put him in charge of a flock, and leave him there with full power and authority until revoked after a regular trial and judgment.

This is a plain, unvarnished statement of plaintiff's claim, and, however natural and reasonable it may appear to some, to members of the Catholic Church it can be received only with horror and indignation. I say this, not as to learned canonists alone, but if your Honor will ask that question of the humblest member of that church you may meet, you may find him so ignorant of the literature of the law as to be unable to read or write, but, he will show you at once that he knows the law itself by telling you instantly that the Bishop would not dare appoint him unless he could give a good account of himself during the five years he was away. Try it sometime, your Honor, and you will be astonished at the promptness of the answer.

We see now that many things are required to warrant a priest to apply for, and a Bishop to grant an appointment to a parochial charge. There must be positive qualifications; age, science and virtue; negative ones, freedom from censure and from *irregularity*.

Craisson defines irregularity: "Irregularity," he says, "arises from infamy or the lack of a good name." This infamy is two-fold, that of *law* and that of *fact*. That of *law* is where it has been judicially declared or confessed; that of *fact* is where it has been *ipso facto* contracted before any judgment has been pronounced. Infamy of *fact* is two-fold, *legal* and *popular*; the former arises from the commission of an act, to which infamy is attached by law; the latter is contracted by the commission of an act by which, in the opinion of good and prudent men, one's good name is lost. All those who are infamous, whether by infamy in *law* or infamy in *fact*, must be considered irregular. 2 Craisson, M. T. J., p. 222, No. 1908-9-10.

With the canon law of the church so plainly stated, that a mere *irregularity* is sufficient to deprive one of the right to receive an appointment, and so minute a recital of how slight a thing may constitute irregularity, will your Honor think there was anything wrong in a Bishop saying to a wandering priest, turning up after five years absence, (and, we will show your Honor that that was an unlawful absence,) "Where have you been? What have you been doing? Who knows how you have been conducting yourself all this time? Show me some letters, some proofs, that you are all right, and have been so ever since you left."

Father Hickey says: "I gave him that leave of absence as, I think, administrator of the diocese at the time. I do not think I limited the time of his absence. * * I did not limit the time, that is my recollection of it." (p. 26.)

There is nowhere in the testimony any declaration that the leave of absence was limited to any certain time. Father Nolan, plaintiff's witness in canon law, says: "A priest cannot obtain an indefinite leave of absence. That would be taking away his title." (p. 18.)

Thus plaintiff, himself, in making out his case, shows by his own witnesses that his indefinite absence was unlawful. That showing is conclusive in this case, and of itself justified the Bishop in calling on him for an account of himself, that is, for proofs of good conduct during such unlawful absence.

Also, see Dr. Quigley, 313, Report.

Bishop Tuigg came to Pittsburgh, as, in one sense, Bishop of a new diocese. An old diocese had been divided—a new one created.

The former Bishop was appointed to what was left of the old diocese. The new Bishop found a priest unemployed, whose last charge had been in what was now not his diocese; furthermore, this priest had been absent for nearly five years, an unlawful absence, because of its extent exceeding six months. The new Bishop regarded this priest as belonging to the diocese set apart from his jurisdiction. There was a law then in force of the Council of Baltimore, (page 75, No. 109,) reading as follows: "And we declare that each priest coming from another diocese immediately present his dismissional letters of *the Bishop to whom he was subjected last*, and that that priest *exhibit those letters* to the Bishop under whom he wishes to place himself." II. Plenary Council of Baltimore, 75, No. 109.

Here was another reason for Bishop Tuigg's demanding letters, another reason why plaintiff should have offered them, from which inevitably comes one of two conclusions, or that plaintiff had no letters, and could not produce satisfactory proofs of regularity and fitness, or that he was wilfully disobeying certain well known essential requirements, in either of which cases the Bishop was justified in refusing him an appointment.

It is not clear from the testimony in this case, at least from the opinion of the experts, but that Bishop Tuigg was right in his first impression that this plaintiff belonged, and still belongs, to the Diocese of Allegheny. Dr. Hecht, on page 128, says, "he is not prepared to say to which diocese the plaintiff belonged," and see the declaration of Bishop Tuigg, on pp. 44 and 46. Plaintiff was, on his application in 1876, refused among other reasons for that he was a foreigner to the Diocese of Pittsburgh, in which case the Bishop was under no obligation whatever to receive him. That question is really not yet decided. This court can hardly decide that question. If the plaintiff is desirous of having it settled he knows where he can have it determined.

There was a further reason why the Bishop was bound in conscience to demand from plaintiff proof of regularity. On page 160 he testifies that at the time plaintiff applied for an appointment, he, the Bishop, had within his knowledge and possession evidence that during plaintiff's absence from the diocese his course of life had not been regular. 160, R.

This, *at least*, was sufficient to put the Bishop *in doubt* as to plaintiff's qualifications.

There is another point as to which the plaintiff makes an unwarrantable claim. He claims that by reason of a diocesan regulation as to examinations, that after a priest has been once what is called fully approved under them he is forever after a fully approved priest, as to all things; the presumption being always that, as to *all things*, he is fully qualified unless the contrary is established by charge, trial and judgment. The error is this. Fully approved under those regulations means only that he is approved as to having sufficient *knowledge* to administer the sacraments, particularly the sacrament of Penance, which requires a special knowledge of moral theology. It has nothing whatever to do with an approval as to his fitness to have a parochial charge. Plaintiff pretends, on page 267, to give a correct translation of section 8 of said regulations.

The following is a correct translation of the regulations, as certified to by Dr. Quigley in the report of the case.

APPROBATION.

7. According to the laudable custom obtaining in other localities, we will frequently subject priests, even after we have committed to them the power to administer the sacraments, to an examination, in order that thus the study of sacred sciences may be fostered, that science, by additional experience, may become more accurate and more mature.

8. For this object, therefore, we will appoint examiners. It will be their duty to assemble in the month of November, in the Episcopal city, and subject all to the examination. Those who, for the space of seven years, have exercised the sacred ministry in a praiseworthy manner we will not subject to this examination; but those who shall be ordained hereafter, or who have been ordained within the last two years, shall be examined for five years before they shall be considered fully approved. Others, who have exercised sacred functions less than seven years, also must be examined, but to each one we will signify how often we shall require this from him.

9. The matter of the examen shall be made known to all from the beginning of the year, so that every one may be prepared. New faculties shall be granted to each one from year to year, until having been subjected to the examen as above stated, for five years, and approved each time, then only shall they be fully approved, and shall faculties be granted them until revoked. For the future no

one shall be selected as pastor until thus fully approved. Decrees of Diocese of Pittsburgh, pp. 7-8.

On page 296 of report, Dr. Quigley testifies as to what is the import of this approbation, viz.: the approbation under consideration is only that approbation which is provided for in theology, and is defined as "The judicial judgment of the ordinary as to the fitness of a priest to hear confessions." Now it is of course apparent that an approbation, certifying that one has sufficient knowledge of the science of moral theology to properly adjudge cases in conscience, is by no means a perpetual certificate of personal morality and general fitness to have a parochial charge.

QUALIFICATIONS MUST BE PROVEN.

There has been a great deal of *ad captandum* insinuation in the introduction here of plaintiff's case by a play upon the great maxim of the common law that every man must be presumed innocent until he is proven to be guilty. It is annoying to meet with such a line of argument in a case to which it has no application. That maxim applies where a man is charged with crime and put upon his trial, and is as much a maxim of canon as of civil law. The case at bar, however, is where plaintiff applied for an appointment to a most important office, and I have yet to learn that there is any maxim in common or other law that an applicant for office is presumed to be qualified to perform its duties until the contrary is shown. This question was distinctly considered with regard to the clerical office by Reiffenstuel, the great authority in such questions. It will be noted that he speaks primarily with regard to ordination, but says distinctly in two separate places that the same rule applies in all cases of promotion to any office or dignity, and furnishes an admirable reason, viz.: that interests of third parties are involved, and that they must be protected by proof, lest they be injured by presumptions. The declaration of Reiffenstuel is as follows:

"Is one who desires to be ordained presumed in a case of doubt to be fit, or is he bound to prove his worthiness? *This question extends in general to all who desire to be promoted.*"

It is asked whether he who desires to be ordained is, in case of doubt, to be presumed worthy? Or is he bound to prove his worthiness?

This question refers to all the qualities required for the lawful reception of the Holy Orders, regarding which (qualities) there can be and ought to be instituted a strict examination as to one's family and one's lawful birth ; one's country, in order to know whether one be a proper subject ; one's person, as to one's health, etc. ; one's age, morals and doctrine. This is a prominent question, because it extends not only to those about to receive Holy Orders, *but, in general, to all who desire to obtain any office or dignity.*

In a case of doubt the worthiness of those about to be ordained is not presumed, but must be proven. *The rule is*, one is presumed to be good and worthy until the contrary is proven.

Answer—In case of doubt worthiness is not presumed, but must be proven. This is the common teaching. This is evident from the practice of the Church which so earnestly examines candidates for Orders as to the integrity of morals, knowledge and other qualifications required for the clerical state, in order that their worthiness may be rightly proven. It is likewise proven by reason, because, although one is regularly to be presumed good and worthy until the contrary is proven, yet this rule admits of many exceptions and limitations. First, this rule is limited when there is question of injury to a third party, which (injury) can arise from the presumption of unworthiness. Now, in the conferring Orders in case of presumed worthiness of the *ordinandi* there is a question of great prejudice to a third party, or to the Church, lest unworthy subjects be ordained and received as ministers of the Church. * * * When there is question of prejudice to a third party presumption is not sufficient, but full proof must be had. * * * In a parallel case, lest prejudice arise to a creditor the surety is not presumed responsible unless he is proven to be so. * * *

Wherefore, when there is a question of promotion to benefices, or orders, or of promoting persons to office or dignities, whoever asks for such is not presumed worthy unless he is proven so ; for worthiness for such things as these requires many qualities, internal and external, *which are not presumed.*" *Reiffenstuel*, vol. I., pp. 475 and 476.

For original of the foregoing see Appendix to report of testimony.

It is the duty of the Bishop when an application is made to him for a clerical appointment to demand from the applicant proofs of

his fitness. *Dr. Quigley*, p. 96, second question and answer. *Bishop Tuigg*, p. 37, Report.

Bishops are the custodians of the canons of the church. Canon *Cum quibus*, 24, q. 3.

Moreover, Bishops are expressly commanded to observe and enforce the canons. Canons *Igitur* and *Institutiones*, 25, q. 2. Reiffenstuel, vol. I, p. 198, No. 464.

Amongst others, they must enforce the canons of the Council of Trent, (sess. 7, ch. 1 *de Refor.*) regarding the qualifications required for the ministry.

A priest applying for a charge is bound to furnish to the Bishop proof that he possesses the necessary qualifications. *Dr. Quigley*, report, p. 76; *Dr. Hecht*, 131, 132, 282; *Professor Wall*, report, p. 156, and *Reiffenstuel*, *supra*.

The Bishop is the judge as to whether an applicant for clerical office has furnished proper proofs of qualifications. *Dr. Quigley*, p. 95, report.

In *O'Hara vs. Stack*, 90. Penn. State, 490, the court says: "It is a maxim of fundamental law, that no man shall be condemned without a hearing." The court there assumed that an injunction issued out of the Bishop's court, directed to an official under his jurisdiction, forbidding him to exercise certain functions delegated to him by the Bishop, was a condemnation without a hearing, and apparently, because of that assumption, gave judgment for plaintiff in that case. I say apparently, that is, one might legitimately infer as much from reading the opinion of Mr. Justice Mercur. I am glad to see, however, that on the re-hearing, Chief Justice Sharswood declared that the opinion, as written by Mr. Justice Mercur, covered in his opinion more ground than the court meant to occupy; that in the opinion of the Chief Justice all they meant to decide was, that, as the only decree below adverse to appellant was the taxing of costs on him, and as the taxing of costs was entirely within the discretion of the Chancellor below, they would not disturb his decision on that point, no matter what the law might be as to the other matter; that the decision did not settle anything as to the powers and rights of the Roman Catholic Church over the priests. Mr. Justice Mercur erred altogether in the assumption that the action of the Bishop was a condemnation without a hearing. In the Catholic Church no man is condemned without a hearing. Does

any one say the condemnation sometime comes first and the hearing afterwards, or not at all. As to that it is as in our civil law, in the case of injunctions. The injunction is often served first, without any hearing whatever of the party enjoined, and then he may show cause afterwards, if any he have, why the injunction shall not be perpetual. It is the same in the Catholic Church, under canon law. There is a little difference in the matter of notice of time of hearing, and what the parties must do to get a hearing. In the civil courts the injunction carries with it a notice that the enjoined party must show cause on the day fixed, which is generally the tenth day after the injunction. In the canon law the party enjoined is generally allowed longer time to appeal and show cause than under the civil law. In the civil law the enjoined party must seek the removal of the injunction in the very court from which it was issued. In the canon law he may at once seek its removal in another and higher court. The canon law system is more favorable to the enjoined, but we can waive contentions as to that. It is a mere question of practice, not of principle. The court in *O'Hara vs. Stack* mistook a difference in practice for a difference in principle. The right to show cause why an injunction should be removed is just as fully secured in the canon law as by any civil code known to the world.

All the witnesses in this case admit that in the Catholic Church there is a perfect system of judicature, a regular series of courts, beginning with the Bishop's court in the diocese as the court of first instance. On this point Dr. Quigley testifies as follows on page 61 :

"Speaking of the organization of the Church, will you state whether there exist complete and perfect tribunals for the redress of grievances, or alleged grievances of laymen, clerics and all up to the highest authorities of the Church ; just state that for the court ?

"A. There do exist complete, and, as far as human infirmity will permit, perfect courts or tribunals in the Catholic Church for the purpose of redressing every grievance of which any subject in the Church may reasonably complain."

I say the tribunals are complete—they are perfect. There are regularly admitted advocates for the tribunals, who are required to take a course of law, and not only civil law, but ecclesiastical law. For a given period of time they must devote themselves to this study; otherwise they will not be permitted to practice in those courts.

The judges in those courts are selected in the interests of the society, whose duty it is to deal with some of the gravest questions in this world. Those judges are second to none, anywhere. Those courts convene regularly. They convene their witnesses and they make a full examination. One of the reasons why Rome is called the Eternal City, at least among the humorists of modern times, is found in the fact that they take ample time to investigate every case that is brought into court. They give a full hearing to everyone that lawfully applies for a trial.

These courts are Superior and Inferior. We have the Court of the Bishop, the Court of the Archbishop, and of Rome. We claim that there is no appeal from the Supreme Court in our Church, and the Supreme Court is Rome.

Of course there are different courts in Rome, for different causes. Here, we put it under the heading Rome. Every case in law according to its nature will be referred to its proper court.

Q. What special court takes charge or cognizance of church cases arising in the United States?

A. The court that is known as "The Bureau of the Propagation of the Faith," the technical term is "The congregation of the *Propaganda Fide*," or we would say it is the congregation of the Propagation of the Faith. It is known as such owing to the fact that it takes cognizance of causes chiefly in what is known as missionary countries—the United States, Canada, &c.

Q. Who is the Judge or Prefect of that at the present time?

A. It is Cardinal John Simeoni.

All the witnesses admit that in all cases of regular trial in the Bishop's Court an appeal can be had to the Superior Courts as a matter of right, not for clerics alone but for every member of the Catholic Church, however humble his station in life may be, except in certain fifteen enumerated cases.

It is, however, contended by plaintiff on pages 3, 5, 189, 190, 191, 192, 193, and many other places, that there is a distinction between the right of appeal from a judgment of the Bishop pronounced after a formal trial where a hearing is had and a judgment of the Bishop pronounced as in the case at bar, where there has been no trial; that an appeal from an extra judicial judgment does not exist as of right, though it is sometimes entertained as a matter of grace. The first is called by the witnesses a *judicial sentence*, the

second an *extra judicial* sentence, the witnesses using the word sentence in the sense of the Latin word *sententia*, which means a judgment, they not meaning *sentence* as understood in our law, viz. : the declaration by the court after judgment of what the punishment shall be.

We admit that the judgment pronounced by the Bishop in the plaintiff's case denying him an appointment was an extra judicial judgment, but that the plaintiff had a perfect right of appeal from that judgment we claim is shown by the following :

Dr. Quigley says, page 286, that it is true, as a general rule, that appeals lie only from judicial judgments, but that in the statement of the general rule there is added the qualification, *excepting the cases provided for in the Canons*, and he quotes Reiffenstuel, Universal Canon Law, vol. 1, Paris Edition, 1864, page 210, as authority.

Dr. Quigley says, further, page 286 : Again, in Reiffenstuel, vol. 1, page 426, we read : "What is to be done in case of the neglect of a Bishop ? Although to supply the negligence of a Bishop one cannot, in the first instance, go to the Archbishop, *by way of a simple complaint*, nevertheless the Archbishop can be approached by way of an *appeal* whenever it appears that the subject of a Bishop has been gravely injured by the Bishop's neglect. For the remedy of appeal is generally granted to all to repair a *gravamen* unjustly imposed by the judge. Again, the Archbishop can be approached, not indeed to supply the neglect of the Bishop outside of these cases so provided for in the law, but to compel the Bishop unjustly neglecting to rightly perform his duty. It is not to be wondered at that the Archbishop can so compel the Bishop unjustly neglecting, for, by metropolitan law, the Bishop is subject to the Archbishop." 1 *Reiff.*, 426.

Reiffenstuel has a special chapter entitled "Cases in which the negligence of a Bishop is supplied by the Archbishop, etc."

He begins by stating that there are forty such cases, and treats at length of seven of them as being the principal cases under that head. The fourth of these he states as follows : "The case in which the Bishop has been negligent concerning the conferring of ecclesiastical benefices." 1 *Reiff.*, pages 426 and 427, Nos. 17 and 22.

In the same chapter he defines the negligence of prelates as, 'the omission of that which by law or usage the prelate is bound to do by force of the office which he holds.'

"Negligentia praelatorum est omissio illius, quod de jure vel consuetudine praelatus facere tenetur ratione officii quod gerit." In proof of this he cites the canon *Negligere* 2, 3.

Confirmatory of this, in the second volume of Reiffenstuel, p. 9, *et seq.*, there is a chapter treating of the jurisdiction of the Archbishop over his suffragans and their subjects, in which on page 8, No. 43, he enumerates eighteen such cases, and the first case he mentions is where he has jurisdiction by reason of appeal from any judgment or *gravamen* imposed by the Bishop. "Quando a sententia vel gravamine episcopi legitime appellatur ad Archiepiscopum." 2 *Reiff.* p. 8, No. 44.

The law, though in force in this country on general principles, has been expressly enacted by the Council of Baltimore, on page 61. After stating generally the discipline of our times it says, as to jurisdiction of Archbishops, that they have jurisdiction under five principal heads, the third of which they give as follows:

"The Archbishop supplies the NEGLIGENCE of his suffragans in the cases specified in the law." "Negligentiam suffraganeorum in casibus a jure statutis supplet."

And the fourth is, "he receives appeals from judgments of suffragans according to the rules referred to in the Holy Canons," showing that the distinction is understood and preserved between appeals in cases of judgments and jurisdiction to remedy *neglect*. *Acta et Decreta*, Con. Plen. Balt. II.

THE SECOND REFUSAL.

Plaintiff's first formal application to Bishop Tuigg for an appointment was in 1876. The Bishop declined to appoint him.

Plaintiff notified the Bishop that he would see the Bishop's superiors, meaning, he says, the Holy See. (p. 4.) Plaintiff did go to Rome, but it seems he got nothing there expressing any disapprobation of the Bishop's action in the matter.

Plaintiff says: "When I returned from Rome, I called on Bishop Tuigg. He said to me, 'Have you any documents?' meaning the Propaganda. I said, 'No; you have got that yourself, Bishop.' "

Plaintiff's testimony, p. 4. This was, according to plaintiff's own testimony, on June 26, 1879, (p. 260.) Now, the plaintiff left Rome in September, 1878. (260) arrived in New York in October, 1878, (260) and did not present himself to Bishop Tuigg for eight months after his arrival in New York.

The plaintiff had been refused an appointment in 1876, and had gone to Rome to complain of the Bishop. On January 31, 1878, Cardinal Franchi wrote from Rome to Bishop Tuigg, "Lately there came to Rome a priest of your diocese named Sheehan, who seems to be much prone to the vice of drunkenness." *Record*, p. 350.

Here, your Honor, is the secret of this whole business. The plaintiff was addicted to the vice of drunkenness, so much so that he could not refrain from it, at the time, of all others, when if it were possible for him to control himself, he would have done so when he was in the city of Rome, under the eye of the authorities there, complaining against his Bishop for refusing him a mission with the care of souls.

If he could not refrain under such circumstances, how does your Honor suppose he was conducting himself during the five years that he was roaming from Niagara Falls to Lake Superior, from New York to New Orleans? Does your Honor see now why it was that plaintiff had no letters to show good conduct during those five years of absence? Does any one say that your Honor is not to look at that? That there is no proof of that fact? Oh, yes, there is, and your Honor will consider it. Your Honor is sitting as a jury in this case and will consider all the evidence in this case, the acts of plaintiff, this letter from Rome, for what it is worth, stating the fact, not of his single instance of drunkenness there, nor of occasional instances of drunkenness, but that he was not only prone, but much prone to the *vice* of drunkenness. You will take that into account together with the singular conduct of plaintiff, and the oath of Bishop Tuigg, that at the time he refused him an appointment, in 1876, he had within his knowledge and possession evidence that during plaintiff's absence he had been irregular. You will consider all those things and will find as a fact whether Bishop Tuigg had not sufficient cause to have grave doubts as to plaintiff's fitness to have the care of souls, doubts sufficient to justify him in calling on plaintiff to furnish sufficient evidence of fitness before giving him an appointment.

As to the other letters from Rome they are recommendatory merely, clearly leaving the matter in the discretion of the Bishop to do what he thought best with plaintiff when he should present himself on his return from Rome. Rome could not do otherwise, because from Rome to Pittsburgh is a long way, and a character in good condition on leaving Rome might be in quite a different condition when the owner of it arrived at Pittsburgh, particularly when the owner was unable to control his weakness for liquor even while in the city of Rome trying to get a vindication of his character. And so it proved in this case. He arrived in New York in October, 1878, and did not present himself to his Bishop until eight months thereafter. The Bishop again, and doubtless very properly, refused him, and whether he did or not is a matter to be determined between them in their own courts, but in any event the burden of proof of showing that he was qualified rested on plaintiff, as we have shown, and this court will not entertain his claim until he shows that he did comply with the requirements of the rules and regulations of his church, something which he has not only not attempted to do here, but which he claims he is not required to do.

PLAINTIFF LOST HIS TITLE OF SUSTENANCE BY ABANDONING HIS DUTY.

I notice many passages in the testimony, as to the right of support from the diocese with the title of mission. I understand plaintiff claims support by reason of having a title of Mission, but I do not find anywhere in the testimony that plaintiff proves that he had a title of mission in the diocese of Pittsburgh, or that he was ordained with the title of mission. I find he says he was ordained priest in 1857, but he does not state by what title. If it be said that the Council of Baltimore speaks of priests here being ordained with title of mission, I answer: First. It says merely that they are so ordained with scarcely an exception, as plaintiff distinctly himself says, (page 11). If he were ordained in this country he should show that he was not one of the exceptions. Second. I do not see that plaintiff proves he was ordained in this country at all. If he was ordained in Europe it would most likely have been with some other title, as title of Mission is hardly known there. But even if plaintiff did have title of mission in the diocese of Pittsburgh he lost it by abandonment, and losing it, as it is a

title of sustenance, he lost all right of support through, by or under such title.

Dr. Quigley, on page 73, testifies that the instruction of the Propaganda of April 27, 1871, says: "Those who have been promoted to ecclesiastical orders, with the title of a given mission, without doubt lose their title when they give up the office of a missionary." Dr. Quigley then adds: "In my opinion the law says that when the priest abandons the discharge of the duties that are incumbent upon a pastor or a *quasi* pastor he loses what is called the title of a mission." Page 73.

If plaintiff lost his title of sustenance, he not only lost his right to appointment as pastor, but he lost his right to support from the diocese generally.

Plaintiff did abandon the office of a missionary. He absented himself from his post without permission for more than four years, almost five years—that is, from the first week in January, 1871, to the second week in October, 1875, four years and nine months. He had no leave of absence which saved him from abandonment.

The law of the Council of Baltimore on the duty of residence is as follows:

"We enact and declare that every priest, ordained for any diocese in this province, is bound by force of the promise made in his ordination to remain in the diocese and subject himself to his Bishop until canonically dismissed." II. Plenary Council, Baltimore, page 75.

For original Latin, see Report, page 355. For other laws of residence, see Council of Trent, session 23, chapter 1., *de ref.* This law of course does not interfere with the other laws with regard to leave of absence, but this matter of leave of absence has also been the subject of much legislation, and there are well defined rules on the subject. Leave of absence is, in fact, a dispensation—a dispensation from the obligation of residence.

Council of Trent says:

"Pastors shall not obtain leave of absence beyond two months unless for grave cause." "Even this permission must be granted with specified cause and in writing."—*Council of Trent*, Session 23, chapter 1. *De ref.*

There was an author, Navarrus, Consil. 15, N. 2, *de cleric non residen*, who claimed that a priest could be absent for a long time. But this teaching has been rejected by nearly all the authors.

Authors generally claim that Bishops have power to grant leave of absence for two or three months.

Garcias teaches that the Sacred Congregation of the Council rejected the proposition that a Bishop has power to permit a pastor to be absent four months for the purpose of assisting during a diocesan visitation, even when said pastor had a proper substitute to take his place.—*Reiffenstuel*, vol. 3, pages 433, 434.

Leave for perpetual absence cannot be granted by the Bishop for any cause whatever. Only an Apostolic indult suffices for this. This is the teaching of the Council of Trent, session 6, chapter 2.

The Roman Congregation never grant such indults for perpetual absence. They grant leave of absence for only six months.—*Bouix de Parocho*, page 545.

The reason of this wonderful strictness is the great solicitude which the Church has for the care of souls, whereby she with apparently great severity compels her priests to be ever at their posts to minister to the wants of the faithful, unless excused by the gravest necessities. A five years unexcused absence like that of plaintiff is most clearly an abandonment of the duties of his office and a forfeiture of all its rights.

SUMMARY.

Our objections to plaintiff's claim may be summarized thus:

1. He is not entitled to demand \$800, or any other sum, annually, as salary, even though he were a pastor in charge, because no fixed salary is provided for.
2. He is not entitled to sue the Bishop for support, even though he were an unemployed priest in good standing because the Bishop is not personally responsible, and all his official funds are trust funds, and in the absence of a special contract a demand on a trustee for trust funds must be in equity for an execution of the trust.
3. He was not entitled to an appointment because he did not furnish proofs of qualification.
4. He is not entitled to support because he abandoned the office of a missionary and lost his title of sustenance.

Your honor, I am painfully sensible of the fact that these hurried remarks are not worthy the name of a brief on this subject. The fact that there are nearly four hundred pages of printed testimony in this case, all of it on the subject of canon law, and that I have had but a few days to examine it and make these notes, is my excuse for their crudeness. I can see though that your Honor followed the testimony very closely, and that all along through the case you kept sounding the key-note of the whole matter by repeatedly asking the question, "what is the canon law rule as to support in a case like this?"

Remembering that your Honor will hold that the plaintiff has the affirmative in this contention, I feel I may rest here without further comment on the matter, except to remark, your Honor, with all due respect for this court, and as a person honored with the privilege of advocacy here, I would be the last one to be guilty of any intentional lack of respect. I cannot take leave of this case without saying distinctly what I may have said indistinctly, viz: that we cannot but protest that plaintiff has no right to drag these ecclesiastical questions into a civil court. Civil courts deal properly only with civil contracts. He has no right to bring what we denominate "the Holy Canons" into the profane atmosphere of a civil court.

If the plaintiff has civil rights, we also have rights as an association, with which the civil law has nothing to do. This is a free country; we have a right to regulate our own private religious discipline, and when the matter is better understood, more ably expounded than I am competent to do, our claim in that respect will be recognized.

All of which is most respectfully submitted.

EDMUND F. DUNNE,
Of Counsel for Defendant.

Chicago, May 21st, 1881.

NOTES.

Notes to argument on proposition that plaintiff was bound to prove qualifications.

No. 1. Plaintiff, anxious to catch at every possible ground of complaint, urges that by the law of Baltimore No. 77, a trial should have been tendered him before any judgment rendered against him.

That law of Baltimore relates only to criminal cases, *causis criminalibus*, in which a certain censure is to be inflicted, or an incumbent of some particular charge or office is to be deprived of it.

The case at bar was not within that rule; it was not a deprivation of office, it was simply a refusal to appoint to an office.

No. 2, *Cummings vs. State of Missouri*, 4 *Wall*, 277, is not in conflict with this doctrine. That case merely gives the rule as to a prosecution between the Government and an individual, where the Government undertakes to punish for crime without trial, and such a law is contrary to the bill of rights in the American Constitution. Will any one say though, that if the Legislature of Missouri should enact that teachers in the public schools must always furnish proof of good moral character before being appointed to the charge of any school, and made it the duty of the County Superintendent to demand such proofs before giving any appointment, and a teacher came to him after a five years absence and applied for a school, and the Superintendent should ask him for some proofs of moral character before giving him charge of children, particularly if the Superintendent showed he had evidence in his possession that the teacher had been acting badly while away, and the teacher should refuse to furnish any proofs of good standing, would any one say, I repeat, that such teacher would be entitled to demand salary because he was not at once given a school?

Granting even that teaching had there been made a profession, that the applicant had qualified himself for it, and had taken an oath that he would at all times teach in such school in the county as the Superintendent might appoint, *if it was a part of the whole compact* that he must always, when applying for a school, furnish proof of his moral fitness if demanded, would this last part of the law be held unconstitutional? Reiffenstuel says that, in canon law, such is the law as to applicants for clerical appointments; that the qualifications cannot be presumed because of the interests of third parties.

As I understand the ruling here, all that this court wishes to know is, what is the rule of canon law on the point? We think we have shown that canon law requires that the applicant furnish proof of fitness before he is entitled to demand an appointment.

E. F. D.

IN THE
Court of Common Pleas No. 2 of Allegheny Co.

No. 173 JANUARY TERM, 1880.

REV. PATRICK M. SHEEHAN,

VERSUS

REV. JOHN TUIGG,
BISHOP OF THE DIOCESE OF PITTSBURGH.

APPEARANCES.

For Plaintiff,	{ T. M. Marshall, Esq. A. V. D. Watterson, Esq.
For Defendant,	{ C. F. McKenna, Esq. John Barton, Esq.

STENOGRAPHER'S NOTES OF TRIAL.

PITTSBURGH, January 14th, 1881,
Before Hon. J. W. F. White and a jury.

REV. PATRICK SHEEHAN, sworn on his own behalf and examined as follows :

I am a priest of the Catholic diocese of Pittsburgh ; was ordained priest in 1857. At that time the Bishop was Bishop O'Connor. There ought to be a record of all the priests in the diocese. The Bishop is bound to keep one. I absented myself from this diocese. The permission for me to do so was in writing, but the writing is lost. The administrator of the diocese in the absence of the Bishop gave me this leave of absence. He was the Rev. John Hickey. I

remained absent a little over four years. When I returned within the territorial limits of the diocese I found Bishop Domenec the official Bishop. Since the Rev. John Tuigg has been Bishop I have tendered my services to him as a parish priest on three occasions. The first occasion was through Rev. Stephen Wall before Bishop Tuigg's consecration, but after he had jurisdiction according to the laws of the Catholic Church, a Bishop has jurisdiction when he receives his appointment and official documents from Rome, although he is not consecrated Bishop. The next time was to Bishop Tuigg. That was the year Bishop Tuigg was consecrated, 1876. I also tendered myself to Bishop Tuigg in July, a year ago, 1879, when I returned into the diocese from Rome. After these tenders I was not assigned to any place in the diocese, nor any mission duty. The reason given to me personally by Bishop Tuigg was that I was a foreigner to the diocese of Pittsburgh. That is, that I did not belong to it; that the council of Baltimore said so, and when I protested he said that I was away six years, and the council said I was a foreigner. I told him that I knew it did not say so, and that he knew it, and that I knew he knew it; that he had the power and could abuse it, and I would see his superior.

No sentence was ever passed on me. Bishop Tuigg told me on August 1st, the year of his consecration, 1876, that I was a foreigner. "You know," says he, "I have taken no person into the diocese"—implying that I was a foreigner. And he said: "Archbishop Wood, of Philadelphia, spoke to me in your favor, some laymen spoke to me in your favor, and some priests, and," said he, "your mother wrote to me, but I have received no person yet, as you know." And then I told him, of course I could not understand how I was a foreigner; and, under protest, I told him it didn't exist according to the laws of the Catholic Church, and I would see his superior. On last July, a year ago, he told me he did not look upon me any longer as a priest of the diocese. I had a mission in the diocese for years. To the best of my knowledge I resigned it at the end of 1870—that is, I resigned the special congregation I had. That congregation was in Indiana county, at Cameron's Bottom, Cameron street Catholic Church. I resigned because I was paralyzed for over six weeks. One doctor said it was real paralysis. The physician in Pittsburgh said it was inanition. I lost the use of all my limbs. Could not move with the exception of

my right hand. After I recovered a little from this I was attacked with rheumatism. Before I came into Pittsburgh to go into the hospital I went through what is called in the Catholic Church the Forty Hours' Adoration, and on the morning of the ending of the forty hours I came in on the train for treatment at the hospital, where I was taken by the physician himself. I resigned my mission then to the administrator. I performed various clerical duties around, but with no assigned place, because I had resigned—and my resignation was accepted—the local position or congregation which I had. My resignation was accepted by Rev. John Hickey, the administrator of the diocese, and then by his permission I absented myself from the diocese. Father Hickey told me when he accepted my resignation: "When you are fit for duty there is a mission open for you." He meant physically. A mission was prepared for me. Afterwards, a few weeks or months, I don't remember which, I got the leave to absent myself. I returned into the diocese in October, 1875, before the consecration of Bishop Tuigg, and have been in the diocese ever since, with the exception of going to Rome to see Bishop Tuigg's superior. This is my home. I made a visit to Rome as I had a right to do, but I never made an appeal at Rome in regard to disqualification or anything of that kind. That is forbidden by the law of the Church. Father Hickey, after my return, promised that he would endeavor to procure me a mission. That was after Bishop Domenec had returned from Rome. Father Hickey was then Vicar General. The Vicar General constitutes one-body with the Bishop by canon law.

Q. What is the reason he did not procure you a mission or congregation?

A. After my return then about ten days or two weeks, as well as I can remember by my sworn affidavit before Bishop Domenec unknown to any person in Pittsburgh with the exception of a few of his particular friends, took up his carpet-sack and went to Rome. Hence I saw Father Hickey, who was Vicar General, and whose word, apart from that, was all-powerful with Bishop Domenec; he told me again and again that he would procure me a mission, and I one time asked Father Hickey, could I not see Bishop Domenec myself, and he said, "No, no, leave it all to me, and it will be all fixed." And I was astonished when I found out about Bishop Domenec leaving; I didn't know of it until either the day he left

or the day previous, when of course I thought it improper if not very imprudent, for me to see the gentleman at all. He left as every one knows without any notice, for the purpose of dividing the diocese; hence I didn't see Bishop Domenec and saw Father Hickey, who promised the mission.

Cross-examination by Mr. Barton.

It was either at the end of 1870, or the first week of 1871 that I absented myself from the diocese. I then went to my brother's in New York. I did not connect myself with any other diocese. It was in the fall of 1875 that I returned; I think it was the second week of October. I did not apply for admission to any other diocese while I was away. When I returned Bishop Domenec was Bishop; I did not call upon him and ask for an appointment in the diocese; I never called upon him personally; it was only nine or ten days from the time of my return until he left unannounced to me and all the people and priests of Pittsburgh, suddenly; the diocese was divided, for which purpose he left, and he was afterwards Bishop of Allegheny. I then applied to him for admission, not as a diocesan priest, and he told me he would give me a congregation in the diocese, or a place the same as he gave another priest of the Pittsburgh diocese, but not as a diocesan of Allegheny.

Q. Did he not exact in that appointment certain conditions and qualifications that you were to pass through before you could assume the duties again of a priest?

A. No, sir; my application to Bishop Domenec was subsequent to my application to Bishop Tuigg, the first time, before his consecration, and to my application to him, personally, the August following, which latter occurred in the large parlor of the palace. I then made an application to Bishop Tuigg for a mission in the diocese, as he has authority to designate where I am to labor. The application was verbal. I had previously written to the Bishop asking him to reconsider the refusal he had given to me through Father Wall; that was on the day that Bishop Tuigg was consecrated. When I saw him personally he refused me an appointment, told me I was a foreigner, and quoted the Council at Baltimore. Then I told him, not that I would appeal, but that I would see his superiors. By that I meant the Holy See; Bishop Tuigg has a great many superiors; Archbishop Wood, of Philadelphia, is his superior

in rank; if the old canon law were in force here, he would be in jurisdiction also. As we are here Archbishop Wood has no jurisdiction over Bishop Tuigg to compel him to do a thing within Bishop Tuigg's diocese, except perhaps, when there is what is called a visitation, which an Archbishop has never made in this country. In point of fact, therefore, Archbishop Wood of Philadelphia is not, or was not, the superior in my case to Bishop Tuigg, until I would appeal in a formal manner from a sentence, which I did not.

Q. Had you not a right of appeal from the decision of Bishop Tuigg in your case to Archbishop Wood?

A. If I had a decision, certainly, but I must be sentenced before I appeal.

Q. Did he not refuse your application?

A. Yes, sir, that is no sentence.

Q. It is a judgment, is it not?

A. No, sir, it is not in canon law.

Q. Was there not an appeal from that refusal?

A. No, sir, there is no appeal from that, not by canon law.

Q. Then you say you did consult his superior?

A. I did unquestionably. I first wrote to Archbishop Wood appealing to his kind offices; and I have it from Bishop Tuigg that he did apply these kind offices in my favor and were refused by him, Bishop Tuigg. Then I saw his superior and told him unofficially the fact that Bishop Tuigg refused me a mission or position because I was a foreigner to the diocese of Pittsburgh, and they were utterly astonished at the ignorance of Bishop Tuigg in doing it; there was no decision, because I did not appeal to court; I made a complaint to his superior, simply of the bad treatment I was receiving, nothing more. I presented a sworn affidavit before a notary public of the Very Rev. John Hickey, that I was without any ecclesiastical censure; that I had resigned voluntarily my mission to get another, and that I had obtained permission from him as administrator to absent myself for a time to return with my rights. I presented this, which is necessary in Rome to get the authority that all clergymen from all countries get, on due presentation, to officiate, and without one single word, immediately I got all the permission to officiate that Bishop Tuigg could get himself in Rome or any priest, and I officiated almost every day, and I could officiate in every church and basilick and place within two outside walls with the express sanction of Bishop Tuigg's superior.

Q. Why didn't you officiate?

A. Bishop Tuigg uncanonically deprives me. I cannot break open the church door, and so must do without.

Q. You expect him to purchase or build a church?

A. No, sir; I expect him to open the church door according to my rights. I am not a constable.

Q. What particular church do you wish him to open?

A. Any church in the diocese.

Q. Do you expect him to remove some other priest?

A. No, sir; he is bound to support me and give me a position. He can send me to any position within the Pittsburgh diocese; he has the right to do it.

After recess.—The permission I received from Rome to officiate was in writing, but I have lost it. When I returned from Rome I called on Bishop Tuigg. He said to me, "Have you any documents?" meaning the Propaganda. I said, "No, you have got that yourself, Bishop."

Q. Did he not then tell you he had sufficient information from Rome to justify him in his cause, and to justify him in declining to receive you again in the diocese as a priest? A. No, sir.

Q. And did he not give you the reasons and causes?

A. No, sir; he distinctly told me that he received no documents from Rome, and I have it here taken down in the schedule for the exhibition in Latrobe, the very day of the communication with Bishop Tuigg on the very program of the sisters. I didn't even wait to get other paper to put it down. He said, "I have received no documents from Rome." Then he said, "I have made a proposition to the Propaganda about it." "What is it, Bishop?" said I. "I'm not going to tell my business to everybody." "What, then, am I to do?" "You know the country as well as I do," said Bishop Tuigg. I told him it was not a question of knowledge, and my interview ended.

Q. Did you not call upon Bishop Tuigg the latter part of March or the beginning of April, 1876, shortly after he was consecrated?

A. The interview was to shake hands with him on the street, and to shake hands with him in Mr. Murphy's book store, none other. I did not call upon him officially about that time—not till August. Several priests told me I should call upon him, and in order to please them I went. I thought the first refusal was sufficient.

Q. When you did call did he not admonish you as to certain things in your previous course, tell you what the regulations were, direct you to pursue a certain course to qualify yourself, and then if you did that at the first opportunity when there was an opening he would give you another trial ?

A. No, sir ; I never heard until I saw the affidavit of defence sworn to by Bishop Tuigg—I never even dreamt that Bishop Tuigg or any priest thought—that I was disqualified. I had proof to the contrary in officiating everywhere—I had proof of it in the Roman document in my pocket.

Q. You say that while you were gone between four and five years you never ceased to officiate as a priest. In what capacity did you officiate, and when and where during your absence from the diocese, and by what authority ?

A. After I went to New York I wrote from my brother's house, in New York, to Bishop Domenec, who had returned, and by return mail I got a reply extending to me permission to officiate everywhere, and under it and a subsequent letter I did officiate everywhere ; that I presented them, except in one particular case, where the Bishop said he didn't wish me to lecture—that was the Bishop of Marquette. I presented the leave of absence I had from Father Hickey and the two letters from Bishop Domenec at various places, and was refused by none except the Bishop at Marquette, who did not wish to receive the letters, and did not wish me to lecture, being an Irishman and the population being particularly German. The sponsor of this Bishop, who is now Bishop of Marquette, when I informed him of this interview with his Bishop, telegraphed, unknown to me, in the Latin language, to Father Hickey on the nature of this letter, and Father Hickey's answer by telegraph to him was that I was without any ecclesiastical censure.

Q. You have not answered my question. When and where did you discharge the duties of a priest ?

A. In New York State I officiated in the highest character of the priesthood—for instance, Niagara Falls College. The President's name I forget. I officiated there just as any other priest would. I refer to saying Mass, which is all a priest can do outside. The Bishop of the diocese at Buffalo at that time was Rev. Dr. Ryan. I officiated at Niagara Falls by permission of the Bishop of that diocese. That was the year that I left, 1871. From there I

went to Toledo, Ohio, and presented my papers to the Rev. John Quinn, and remained with him even beyond the ordinary time of a visit of a priest for months. I not only officiated there as a priest in the highest character, but performed all the ordinary duties that any priest outside of the diocese could perform. The Bishop of that diocese was absent, but there was an administrator with the same powers that Father Hickey had here when he was administrator with episcopal powers. I remained there all winter, 1871-72, and officiated under the authority of the Church. Then I went from there to see another friend of mine, a priest also, in the State of Michigan, at Waupan. It was under the jurisdiction of the Bishop of Milwaukee. I stopped for awhile with the Rev. Joseph Smith, and officiated by authority of the Vicar-General of the diocese, or rather, the priest of the place, when I got there; and in the next mission I got authority from the Vicar-General, the Very Rev. Father Kendee, who is now dead. From there I took a trip up the lakes as far as Lake Superior, when I saw the Bishop who refused me. I stayed there all summer, practically attending to one of his congregations for him. I did not have charge of it, as I could not have outside of my own diocese. From there (diocese of Marquette,) I went up Lake Superior, into Green Bay diocese, and was there, I think, about five weeks, when I returned. I know I officiated two or three times under the authority of Bishop Domenec, namely, that I was without censure. The Bishop was not in town at all; he was away. If a priest comes here and presents the proper papers, Father Wall or Father Hickey can give proper permission to officiate without seeing the Bishop at all. I have made a mistake as to time. When I returned from Green Bay, for I passed though on the car first, and it was on my return, I went up Lake Superior, and from Lake Superior I went down South to New Orleans, and was there all that next winter, 1873-74. I never inquired as to whether I could officiate there, for the simple reason that the priest with whom I was stopping was in very great difficulty himself in regard to funds, etc., and I didn't wish him to irritate his Bishop by asking a favor for me, and I never asked, and so did not officiate. From New Orleans I came home to the Pittsburgh diocese, but not direct. I came up the Mississippi by way of the Arkansas Hot Springs for my health. I remained at the Springs four or five weeks for my health. I also stopped a portion of the winter in

Arkansas with the Rev. John Kinney, an old fellow student here. I have friends everywhere. I cannot at the moment give the exact itinerary, but I got home in Pittsburgh in October 1875. I was at Little Rock, Arkansas; I did not apply to the Bishop there for assistance; friends might have done it for me for all I know. I was in trouble there. I went from Little Rock to St. Louis and remained there a few weeks. I did not make an application to the Bishop of that diocese. From St. Louis I came to Covington and stayed there a week or ten days; called upon the Bishop of Covington, a fellow student of mine; did not ask for a mission there at all; was out of funds and asked him for money to get home. From there I came right within the diocese of Pittsburgh and stopped for two weeks at Noblestown with Rev. Father Canevin.

Q. How many years is it since you performed any priestly function in this diocese, such as saying mass, etc.?

A. Not since I left, that is the end of 1870, as well as my memory serves me; I officiated here after my resignation of the parish had been accepted, at the honorable solicitation of Father Hickey, in the most important duties of the priest, namely, the opening of the forty hours' devotion at the Point, which was the last place I was invited specially to officiate. Since my resignation I have never been deputed to a congregation. The letters I had from Bishop Domenec I have lost in my travels. It is a wonder I have half the letters I have under the circumstances. Here is a document sealed in Rome that I have officiated in the highest character under Bishop Tuigg's superior. [Produces paper.]

Re-direct examination by Mr. Marshall.

I was ordained in the diocese and for the diocese.

Q. I wish you would explain what is meant in the Catholic Church by the term "title."

A. I will, and I speak as an expert on canon law on this point. A title is, in the strict sense of the word, property. A priest cannot be ordained without title. I think it is so written in the "Plenary Council of Baltimore," as well as in all known canonical books.

Q. How many kinds of title are there?

A. Some divide them into three. The last instructions from Rome makes only two, with a sub-division, making three in reality.

The title of a parish priest as ordained in this diocese is what is called a title of mission. The proper title for a priest in any country is "Benefice," which means that the title is held in the individual name of the recipient of it. We have no benefices in this country. A Patrimonial title is recognized by the Church when it is shown to be sufficient and is pledged for a decent support of the priest. We have scarcely one person ordained in this country under the title of Patrimony. We have none under the title of Benefice. The Council at Trent says, "Lest a priest should be bound to beg, he is bound to have a title of decent and becoming support, and when a priest is ordained in a diocese it is part of the ordination that he shall be supported by the diocese, by the Bishop." The Council at Baltimore says that no person can be ordained without a title, giving the privilege to American Bishops to ordain under the title of Mission in lieu of the Benefices, which we have not. It was required as an antecedent condition necessary for the ordination, both on the part of the bishop and on the part of the priest, and this before a person is ordained a priest at all, when he is ordained in what is called the first or the second order, there is a guarantee pledged to decent support from the diocese for such person, before he is made a priest, and afterwards when he is ordained a priest it continues then certainly. (Book shown witness.) This is a canon law by Devote, a standard authority in the Catholic Church, diocese of Pittsburgh, on this point of title. The doctrine is found in the section on the ordination of priests and other clerics, paragraph 9, page 191. I will furnish you a translation of it.

Q. Who is an expert in this matter?

A. My opinion is, Father William A. Nolan; he has paid particular study to the relations between bishops and priests, and their rights and duties, which a great many priests do not do. (Book shown witness.) That is a compendium of Moral Theology of St. Alphonsus by A. Koenings, approved by the authorities as printed on the title pages, among them twenty-four Bishops, including the approbation of Right Rev. Michael Domenec, Bishop of Allegheny. It is the latest document on the question. It is approved by Archbishop McClosky, where published as required by canon law, as also by Bishop Mullan, of Erie, Archbishop Wood, of Philadelphia, Archbishop Purcell, of Cincinnati, and by the whole hierarchy of the country, nearly.

Q. I wish you would state if the doctrine of title, as you have stated it here, and the duty of support to the Catholic priest ordained in the diocese is set forth there as in the other book?

A. It is clearer here, because the title of mission is a privilege, one which has not been as extensively treated of by Devote, because it is a grant or privilege given to American Bishops. We have in Devote the ordinary rule of ordination, namely, benefices, which we have not got.

(Book shown witness.) This is "Notes of the Plenary Council of Baltimore," by the Rev. Dr. Smith, formerly professor of Seaton Hall College, in New Jersey. It is the only book on Canon Law which has been published in the English language, and it has, therefore, labored under difficulties in bringing the regular canon law to bear on the abnormal, tyrannical condition of things in the American church. It treats, I think, on the subject just spoken of—the duty of dioceses to support. (Book shown witness.) This is the "Acts and Decrees of the Second Plenary Council of Baltimore," in Latin. It has authority in the diocese of Pittsburgh. It has been promulgated here, and without promulgation, it is authority independent of the Bishop. Bishop Domenec was Bishop of Pittsburgh at the time of that Plenary Council at Baltimore. This book treats on the subject of support. It legislates as to it, and says that no person can be ordained without a title, and that all persons in this country, with scarcely an exception, are ordained under the title of mission. (Book shown witness.) This is a manual of Canon Law by Craisson, Vicar General, formerly of the diocese, I think, of Valence. It treats on the same subject. It is of a standard authority in the Catholic Church and diocese of Pittsburgh, unquestionably, as interesting canon law. It has been examined, approved, and recommended by the Roman examiners, and published with the authority of Rome. The book was sent, therefore, to be examined by the ecclesiastical censors in Rome before publication.

Q. State what salary as a Catholic priest you were entitled to?

A. The amount designated by the statutes, (that is the name of laws for the diocese made in synod by Bishop Domenec,) is \$800 a year for pastors and \$400 for assistants. However, we know that assistants receive their board besides the \$400, which makes it equivalent to \$800, either for pastor or assistant. (Book shown witness.) This is the "Decrees of the Diocese of Pittsburgh," embracing laws

made in Synod by Bishop O'Connor, first Bishop of Pittsburgh, at various times, and Bishop Domenec. It treats on the subject of salary, as I have stated, in the Latin language.

REV. WILLIAM A. NOLAN, sworn and examined as follows for the plaintiff.

I am a Catholic priest of this diocese, and have been for 22 years. I have devoted considerable time to the study of canon law. Modesty and truth would alike forbid me to say that I am an expert in the sense that our experts are generally considered to be versed in canon law, but I am reasonably well acquainted with it.

Q. When a cleric is presented in the Catholic Church for ordination, what must he have?

A. He must have a respectable and assured means of maintenance or of support. That is guaranteed to him before he is ordained a sub-deacon.

Q. When a cleric is ordained a sub-deacon, is he then capable of making a contract with a congregation to pay him a salary?

A. Excepting for the few duties which a sub-deacon cannot perform, and in the present discipline of the Catholic Church they are very few, almost nothing.

Q. State, in your own way, what is the doctrine and usage of the Catholic Church?

A. A priest is ordained without any title. The title must be given him before he is ordained a sub-deacon. By a special law of Rome, no Bishop is allowed to ordain a man a sub-deacon unless the Bishop, in the name of the diocese, or in his own name, for they are one and the same thing, assures that cleric a competent and decent maintenance, because if the Bishop did do, he would be suspended from the exercise of the episcopal office, and the cleric who would receive ordination knowing that he had no such ascertained means of support, would be *ipso facto* suspended. A priest then cannot be denied that which is necessary to his living. However; that right of support is conditional on good behavior, and he may lose it, or in other words, he may lose the title in two ways only—by censures and by irregularities. Censures, according to the definition of canon law, express three things. First of all, excommunication, which may affect laics and clerics alike. Then there is what

is technically known as suspension, which can affect only clergymen; and thirdly, there is an interdict which may affect persons and places, and also affect ecclesiastical bearing. As to irregularities, although they are not censures, a man may by them lose his right to support, but he can only lose that right when he commits some of those crimes expressly stated in the canon law, and no Bishop in the Catholic Church is competent to constitute or name any particular crime a disqualification for maintenance or support. The canon law expressly states that no man can incur an irregularity excepting for crimes expressly stated in the body of the law, and then if they be committed by a cleric or priest, they disqualify him for the exercise of ordinance already received, but they must be notorious, and so declared by the sentence of the Bishop. For a definition of irregularity I will say this: It is a canonical impediment which prohibits a man who is not a cleric from receiving orders, and prohibits them when he has received them, from exercising them.

Q. You say these crimes must be notorious and must be declared by a sentence of the Bishop. What is a sentence of the Bishop?

A. If by common report, or denunciation, or other ways, the knowledge of a priest's infamy, that is, of his having committed these various crimes, be brought to the Bishop, the Bishop by judicial inquiry into the matter must ascertain that the priest has committed them, and then sentence him.

Q. *By Mr. Watterson.*—Can a Bishop legislate an irregularity into existence?

A. He cannot; that is impossible. Speaking of irregularity I would say this, that a Bishop can acquit or dispense with every irregularity that a clergyman commits, excepting that which arises from homicide. If a priest kills another, no Bishop can authorize him to exercise thereafter the sacred ministry; the Pope's authority is required. I would name as those crimes which constitute irregularity after a man has received orders, these: if a priest re-baptises; if he commits sodomy, adultery; if he disobeys the censures of the Bishop, that is, if he officiate, solemnly and publicly, after having been censured by the Bishop, or suspended for his irregularity, homicide, striking a Bishop or a Cardinal; and public, open, and notorious infamy of life that cannot be concealed and render a man by the natural law unworthy of the ministry.

Q. Can the natural law make a person irregular canonically?

A. No, sir. There are many sins that a man may commit against the laws of nature, which will not by canon law disqualify him.

Q. Does public rumor make a crime notorious?

A. No, sir, it does not. As I said, no man can incur an irregularity excepting for crimes specially laid down in the body of the canon law, and no man is competent to attach irregularity to an offence excepting the Pope or Council delegated by the Pope. No Bishop can at all.

Q. Can a Bishop deprive one of the exercise of the ministry without a trial?

A. He cannot remove him from the ministry; that is against the Council of Baltimore, which the makers of Legislators have themselves decreed and pronounced solemnly to be common law of the Catholic Church in the United States. (Book shown witness). That is "The Acts and Decrees of the Second Plenary Council of Baltimore," in which the rule I have been giving is laid down expressly. This book is of authority in the diocese of Pittsburgh, and throughout the United States. No Bishop is at liberty to contravene any law laid down in it, because it would be contravening the authority of the special power which enacted it. (Book shown witness.) This is a "Compendium of Moral Theology of St. Alphonsus," by A. A. Koenings. It is of authority on the ground of the approbations appended in print to it. (Book shown witness). This book is entitled "Notes on the Second Plenary Council of Baltimore," being explanations of the various decrees of the Council at Baltimore in English. I have examined it. It treats of the title of "Mission," and says it is equivalent to a decent and competent maintenance; inferentially it says it is a contract with the diocese or Bishop; it does not say so in so many words. The book is an authority in the Church on account of the approbations in front here. (Book shown witness.) These are "The Decrees of the Diocese of Pittsburgh." The book mentions one topic we have been speaking of, as to the rate of salary a priest is to receive in the diocese, and it limits it to \$800, and gives him that amount.

Q. Under that law whose duty is it to pay?

A. Primarily the duty of the Bishop; secondly, the duty of the mission to which he is assigned.

Q. In the absence of assignment to a mission, whose duty is it to pay him? A. The Bishops?

Q. Is a priest bound to accept any congregation which is offered to him by his Bishop?

A. He is not. He is advised or admonished by the Council at Baltimore not to decline to do so, but supposing the place should be injurious to his health, or unsuitable to his tastes or habits, he may decline.

Q. Suppose he could not make his salary?

A. I do not know that any man has authority to compel another to stay where he is going to starve.

Q. Continue your explanation. You said it was primarily the duty of the Bishop to pay the priest. Now, how is it in case of an assignment for duty to a mission?

A. I would say when you speak of priests, the word is misleading here altogether, because it is associated in the minds of the people with labor. The obligation to support is really long anterior to a person's ordination as a priest. A man might be ordained sub-deacon and probably remain in that order for a year, or two or three years—the obligation is then incurred by the person who is obliged to support him.

Q. Who is that person?

A. I say the Bishop of the diocese. The contract is entered into first of all between the diocese and the cleric or clergyman so ordained, and as the diocese is an impersonal thing, the Bishop, acting for it and in the name of the diocese, assumes the obligation. How much a priest ought to receive for his services, or any clergyman, is a thing that is generally supposed to be within the competency of the Bishop to limit or assign, and in this diocese it is \$800 a year, the statutory amount.

Q. In the event of the mission which the priest fills not being able to pay him the \$800 allowed by the statute, what recourse has he for the balance, according either to the law or the custom of the diocese?

A. It has happened as far as I know, that all of the places to which a priest has been assigned have afforded the salary prescribed by the statutes, with one exception. When I was, about twenty years ago, at Washington, Washington county, I did not get the salary allowed by the statutes of the diocese, and Bishop

Domenec paid me the balance, I have heard of other persons who have had balances made up, but I do not know to say under oath. I have known the plaintiff as a priest, I think, about 23 years. He was a priest of the diocese of Pittsburgh when I first knew him in the year 1858; my acquaintance with him was as long as he remained in the diocese, and since that time I have met him occasionally.

Q. How can a priest be transferred, or lose his position as a priest of the diocese?

A. In two ways: The first way is, if a priest takes letters, technically termed "Exeat," and hands them to another Bishop with and by the consent of his own Bishop. If the other Bishop receives him he loses all his rights in the diocese of his origin, and acquires rights in the other diocese. In the second way, he can lose his right of support on account of bad conduct. Those are the only two ways known to Church law. (Book shown to witness.) That is a manual of all canon law; the author's name is Craison, formerly Vicar-General of the diocese of Valence. It was examined at Rome and approved; it is authority in the Catholic Church in the diocese of Pittsburgh. As far as I remember, the Bishop on taking his oath of office, swears he will obey the canon law of the Catholic Church. I am now one of the priests of the diocese of Pittsburgh, and have charge of a parish; I was ordained in the year 1859; Father Sheehan was a priest before I was.

Q. Has a Catholic priest any right to enter into secular pursuits? A. No, sir.

Q. Where is he forbidden to do so?

A. Forbidden in various portions of the canon law. A priest once ordained, or a deacon, or sub-deacon, must devote himself exclusively to the duties of his ministry, and he is forbidden to engage in any pursuits incompatible with the full and active exercise of that ministry. I could not lay my hand on the place now where that law is laid down, but it is a matter that no one denies. Every priest understands that. The Bishop understands it. He takes "the law for his portion and for his inheritance," when he receives "tonsure," the very lowest order.

Cross-examination by counsel for Defendant.

It is necessary that the infamy to render a priest irregular and constitute a canonical impediment should be public and notorious. It would not be sufficient to be known to the Bishop only; it must be by notoriety of fact. If a Bishop knows a priest to be immoral himself, he can prohibit him from exercising priestly functions, but not by irregularity; there is another way provided; while he is so prohibited he is not entitled to support from the Bishop, or from the diocese. Every Bishop is given, by the Council of Trent, an abnormal power unknown to the history of the Catholic Church until that time. The decrees of this diocese contained in book shown to me, are binding on all the priests of this diocese. Every statute law binds a priest to its observation, but with this proviso: a Bishop is not at liberty to legislate against the common law of the Catholic Church, and in so far, therefore, as the diocesan law is in conformity with, or not opposed to, the general law of the Catholic Church, it obliges. The canon law in force in Europe is in force also in many respects in the United States. It is the rule here. The canon law is first of all regulations based upon the law of nature, common sense, the enactments of Councils and Popes, all of which have general application according to their conformity to the laws of nature and what is right. There are some things, however, in the body of the canon law that are not in force in this country, for instance, as to the institution of parishes, etc. At the present time I cannot recall to mind all the rules in the book, but I do not know of anything enacted by the Diocesan Synod contrary to the canon law. If it were so it would have no binding effect.

Q. Then if I understand you, as far as you know, this book contains the canon law for the diocese in important matters?

A. Yes, sir; in so far as it does not conflict with the laws of Baltimore and the uniform law—the general laws of the Catholic Church—it is an authority which no priest is allowed to disqualify. The provision in the book as to the support of priests is to the effect and means, that a priest who has charge of a congregation is to be entitled to \$800 a year for his services, and an assistant to \$400 and his board, in case the priest has an assistant to help him.

Q. For the time that a priest is absent from the diocese, say four or five years, traveling wherever he thinks proper, doing noth-

ing, would he be entitled to the compensation prescribed by the enactment of the Synod of Pittsburgh?

A. He would be entitled to nothing: "Unless a man labors, neither shall he eat." When a priest is ordained he assumes obligations to the Bishop and the diocese both. When he is ordained a sub-deacon, he assumes the obligation of serving in that mission perpetually—as long as he lives—and when he is ordained a priest, he assumes the two duties of reverence, not to the Bishop who ordains him, but to the Bishop of the diocese to which that Bishop is ordained, and if he translates himself to another diocese, then to the Bishop of that diocese. A priest cannot obtain an indefinite leave of absence; that would be taking away his title, and no priest is at liberty to do anything by which his title would be forfeited. A priest's title could not be surrendered except by the special permission of the Pope; it could not be done by his own act, by leaving and remaining away, because he has taken an oath to serve that diocese as long as he lives.

Q. The doctrine is, if he is a priest once, he is a priest forever?

A. Yes, sir.

Q. Even if he would get married?

A. Yes, sir; but a priest cannot get married by the canon law—that is, his marriage is invalid. He may go through the ceremony.

Q. Would he not lose his title to maintenance according to the canon law? A. Certainly.

Q. I understand you to say that wherein this book does not conflict with the principles announced at the Plenary Council of Baltimore, or the canon law, it contains the governing rules of the diocese of Pittsburgh as to the priests and bishops, too?

A. Yes, sir.

Q. Now, I wish you would point out in this book where it provides that a priest who is unemployed—that is, not engaged—is entitled to either \$400 or \$800 a year salary for maintenance.

A. It does not say anything about a priest not engaged.

Q. Is there anything in the statutes of the diocese of Pittsburgh or in the canon law that provides that where a priest resigns his charge or his parish, goes away and remains absent for three, or four, or five years, or as long as he pleases, and comes back, he is en

titled to a congregation, and the bishop is bound to provide one for him ?

A. I cannot answer that without making some definitions. If a priest goes away contrary to the will of the bishop, he does an act by which the bishop can censure and punish him. He may leave with the permission of the properly constituted authority, though, but such authority has no right, to my mind, to give a man unlimited leave of absence, because that would be an impairment of the contract that exists between a man and his ordination in the diocese. He can give him leave of absence which can be renewed from time to time.

Q. Suppose it is not renewed, and the party stays away for five years ?

A. I say if he be absent with the permission of the authority, on his return he is entitled to a mission if he has not rendered himself in the meantime irregular, that is, become disqualified by irregularity. If he has left the diocese, that is, taken temporary leave of absence, because leaving the diocese no man can do except in two ways as I have stated. If he has such leave of absence, upon his return he is entitled to a mission as I have stated. But if he has left the diocese without the permission of the bishop, on his return the bishop could punish him, that is, by censure, for contravening his order, for having deprived the diocese of his services, etc. As every priest must have some title, and that means a means of support, if he comes back from a leave of absence and makes a tender of his services being without irregularity, and these services as a priest of the diocese are not accepted, an obligation is incurred by the proper authority to give him a maintenance, but while he is absent he has no right to the support given to the priests of the diocese.

Q. Suppose a priest goes away and is absent for five years without a renewal of permission from his bishop to remain away, in case he returns to either that bishop or his successor and makes a demand on him, is the bishop under obligations to support him ?

A. He is, equivalently.

Q. Have you got any authority for that ?

A. The authority is that so long as a priest is a priest, he is a priest of the diocese, and until he has forfeited that right the bishop

is bound to support him if he works and labors. That is the nature of the title of missions.

Q. Do not these regulations provide that he must be employed before he is entitled to compensation?

A. No, sir. I say when a man is ordained a sub-deacon, where he can do anything at all to benefit the people he acquires a right to compensation. Of course labor is the ground on which a demand for compensation is based.

Q. Suppose a man is in charge of a congregation, and having received the written permission of the Bishop to leave that congregation and be absent for a time; he remains away, say for a period of three or five years, does not that fact alone deprive him of his rights as a priest of the diocese?

A. During the time of his absence; yes, sir.

Q. And afterwards? A. No, sir.

Q. What do you mean by an admonition?

A. It is a warning given a man to abstain from certain things.

Q. Suppose the admonition is not heeded, what is the penalty?

A. There might be various penalties. The Bishop might, for instance, suspend him for a month or two months, or if the crime, for which he was admonished, was a pretty serious one, it might be longer at the discretion of the Bishop. The Bishop has the discretion, provided the penalty is not perpetual or disproportionate to the crime. There must always be a proportion between the crime and the penalty.

Q. Is not a man who is absent, bound, upon his return, to give an account to the Bishop of his course of life while he is away; and is not the Bishop entitled to be informed before he gives him charge of a congregation?

A. If I were a Bishop I would probably ask him that question.

Q. Do not you think it is his duty to be informed on that subject?

A. If it would be his duty it would be the other man's right to answer the Bishop in those matters, because they are correlative.

Q. Is it not the duty of a man to answer the Bishop on those matters?

A. No man is bound to answer anything that would effect his own reputation, I presume.

Q. That is your construction of the canon law, is it?

A. Yes, sir.

Q. That when a Bishop inquires into the conduct of a priest when he has been absent, the priest is not bound to answer?

A. He is bound to give a general account of himself, but if he has committed any crimes that render him infamous, or the revelation of which would render him infamous—

Q. You don't think he ought to tell?

A. I certainly think he ought not.

To Mr. Barton.—A man absenting himself from his diocese and duty without permission, or beyond the time for which permission is granted, violates the law of the church and violates his oath, and when he returns he is bound to give to the Bishop a reasonable account of his absence, excepting as to those things that would render him infamous. If he does not give such reasonable account, it is the duty of the Bishop to admonish him; and if he still decline, I think it is the right of the Bishop to suspend him.

Q. Then has he not the right of appeal?

A. I have to answer with a distinction. If the Bishop proposed by virtue of his ordinary authority as a Bishop to summon him before his commission of investigation to answer this charge, of being absent without special permission, or being absent beyond a certain time without his permission, and the priest refused to comply with the summons, or if complying, was found guilty, then if the Bishop suspended him, that would be a judicial sentence, from which there would be an appeal to the Archbishop. But the Bishop can proceed in another way. I hinted at this before, but you did not hear me. There is another way known by which the Bishop can inflict censure on a priest without any trial at all. He can write to any priest in the diocese and can say to him, "Reverend Sir: You are hereby suspended. I suspend you for two months, or for a year or two," and the priest has no appeal whatever from that sentence, provided the Bishop states that he proceeds according to the decree of the Council of Trent.

Q. By this law of the diocese of Pittsburgh promulgated by the council at Baltimore, is not the whole question of salary of priests laid down? A. Yes, sir.

Q. Turn to that and point out in any place a case of this kind, that where a priest resigns and goes abroad, either with or without permission, upon his return the Bishop is bound to assign him to a parish.

A. I could not show you that case, but I could show it substantially.

Q. Is there any such provision in that law ?

A. No, sir, there is not, excepting equivalently.

Q. Is not this the rule of compensation, that a priest before he can draw his salary, must have a congregation ? A. No, sir.

Q. And does not the regulations provide that he is permitted to take out of the proceeds that he may collect from his parish a certain sum and no more ?

A. You are mistaken altogether. A priest has no more right to be a parish priest or a quasi parish priest, than he has to be Vicar General.

Q. Supposing a priest only collects \$600 a year in his parish, is there any rule of law laid down by which he is entitled to draw from any other source the additional \$200 ?

A. Yes, sir ; it is pointed out in this book that if the income arising be insufficient to meet the statutory salary, the priest or pastor so called, can receive the remainder from any other source of income within his district.

Q. From his congregation ? A. Yes, sir.

Q. But can he receive it from any other source of income of the diocese than his congregation ?

A. No, sir, but by the law of Baltimore he can. This law does not speak of a priest drawing salary except through the congregation. If a Bishop has more priests in his jurisdiction than he has parishes, some of them must be unemployed in parochial work, but not necessarily in other kinds of work ; he can assign them to any ecclesiastical duty he pleases, where they are entitled to draw the emoluments derived from it.

Q. And if he has no place, a priest cannot derive any income from it ?

A. His right to support remains intact, whether he is employed or not. This book does not state that, but the law of Baltimore does, which prescribes that the Bishop shall give every priest, or sub-deacon, a competent and respectable support, no matter what the nature of his duty may be.

Q. Suppose a Bishop is not entitled to collect off his diocese enough money to pay all the priests \$800, then where will he pay it ? Out of his own pocket ?

A. I am not bound to answer that.

Q. Suppose a man disqualifies himself by misconduct, is the Bishop bound to support him?

A. If he misconducts himself to an irregularity, that is, if notoriously and publicly, and if it be declared by judicial inquiry, certainly he has no right to support. Drunkenness would be such irregularity.

Q. Suppose a Bishop knows that a man's habits of life are irregular, intemperate, etc., would not the Bishop have a right to silence him?

A. Yes, sir; silence meaning suspending him from the ministry.

Q. Would it not be his duty to do it?

A. Yes, sir; and a Bishop would fail in his duty who would not do so.

Q. When a Bishop suspends him, is the diocese then bound to support him? A. No, sir; while he is suspended.

Re-direct Examination.

Q. They have asked you the question, whether, if a priest would leave the diocese without leave, he would be entitled during his absence to maintenance, and you said no. Suppose a priest had leave of absence on account of ill health and returned after the restoration of his health, and tendered his priestly services in the diocese, would or would not the Bishop be bound to sustain him and give him his salary from the time of his return and tender of services?

A. I think so, decidedly; I am of that opinion; I am certain of it. The mere fact that the Bishop had knowledge or hearsay of the irregularities I have mentioned would amount to nothing, unless there was an actual suspension. Suspension is a judicial act of the Bishop. All the offences for which irregularities occur must be not only notorious, by notoriety of fact in law, but they must be so declared by the Bishop, excepting one act, and that is homicide. I spoke of one of the vows of the priest being obedience to the Bishop, that is canonical church obedience. If the Bishop orders him to do anything outside of his duty as a priest, as to engage in secular pursuit, he has a right to disobey. As to the vow of reverence, I could hardly conceive of an instance wherein a Bishop would lose

his right to claim reverence of a priest ; I make reverence to consist of the outward evidence of respect.

Q. Then, if I understand you, if a priest has leave of absence from the Vicar-general, or the administrator of the diocese, for ill health, there is not any limitation of time for his return in church law, excepting restoration of health ?

A. It would be until his recovery.

Q. Until the removal of the cause he would have a leave of absence ? A. Yes, sir.

Q. If a man were stricken down with paralysis and got leave of absence, to be conveyed to a neighboring State amongst his friends out of the diocese, and remained away for several years, if he recovered and returned would be entitled to his pay ?

A. He would not be disqualified from resuming his proper place as a priest in the diocese after he recovered.

Q. When you speak of absence forfeiting his right, you mean if he voluntarily stays away when he is fit to perform duties ? That he is not entitled to pay that time while he is away ?

A. That is what I mean.

Q. If he is away from physical or mental causes, and upon recovery of his mental faculties, and physical abilities, comes back and tenders his services without irregularity or censure by the Bishop, he is entitled to his salary from the time he comes back ?

A. Yes, sir.

Re-cross-examination.

Q. For sick or disabled priests is there not an asylum and separate support provided ?

A. The council at Baltimore advises and exhorts the Bishops very strongly to recommend the people of the parish of the priest wherein he last served, to provide for his maintenance while sick in some way.

Q. When a man becomes sick there is a provision by which he is provided for ?

A. I am not aware of any provision in this diocese.

Q. Is there not a regulation by which the Bishop provides for a sick priest ? Is he not required to do so ?

A. That question is answered in the other. So long as a man does not voluntarily and by his own free will and by his own mis-

conduct, disqualify himself from the work of the ministry, if by the decrees of God and the natural course of events, he loses his health, his right of support from the diocese remains intact as long as he lives, and it would be the duty of the Bishop to see that suitable provision was made for him.

Q. Is it not always done? Did you ever know a case wherein they failed to make proper provision for a priest who was worn out and not able to perform his duties?

A. I know of one instance, the Rev. McSweeney, my predecessor at Butler, who was regularly taken into this diocese, but owing to natural causes was unable to do any duty. He was at the Mercy Hospital when his means—ready money—was all gone, and he applied to the Bishop to support him or make provision for his staying in the hospital until his recovery or death. I saw the letter of application and read the answer of Bishop Tuigg, saying that he did not look upon him as a priest of the diocese and dismissing him.

Q. Was not that man provided for by a special order of the Bishop?

A. I am not aware of that. I know he made a special application to Rome.

Q. Where is he now?

A. When I last saw him he was in St. Francis' College, Loretto.

Q. Who sent him there and provides for him?

A. I do not know, I should think it was Bishop Tuigg.

By Mr. Watterson.—By whose authority is he supported at St. Francis?

A. I am aware of the fact that that same old gentleman consulted me in his predicament when he was dying and refused the support of the hospital, and I told him he had better lay the matter before the Propaganda at Rome. He wrote there and soon after, some certain time after, Bishop Tuigg went to the hospital and very kindly offered to support him. So he was provided for, whether by the direct result of the letter to Rome or not I could not say.

To Mr. Marshall.—There is no statutory law in the diocese for the erection of hospitals for disabled priests; that is a mere question of usage or convenience; the duty of maintenance towards a priest arises from his title, from his ordination by the Bishop.

REV. FATHER HICKEY, sworn for plaintiff and examined as follows by Mr. Marshall:

I was Rector of St. Paul's Cathedral in 1870, in the diocese of Pittsburgh, and I think I exercised the duty of Vicar General, or Administrator in the absence of the Bishop; I have been a Priest of the diocese of Pittsburgh nearly twenty-three years; I know the Rev. Patrick Sheehan very well; I know that he has been recognized as a Priest of the diocese and ordained for the Missions of Pittsburgh; I knew him in the capacity of an ordained Priest of Pittsburgh for several years, in fact until the time he left the diocese by leave of absence, which must have been about the year 1870; I gave him that leave of absence, as I think, the administrator of the diocese at the time; he left because he was sick at the time; I do not think I limited the time of his absence, it depended altogether on his health, if he was convalescent and able to return he could do so; I did not limit the time; that is my recollection of it; I cannot state positively when Father Sheehan returned to Pittsburgh. My memory fails me as to dates, but I think he was absent until about the year 1875. If he returned in the year 1875, Bishop Domenec was Bishop of Pittsburgh, and he would have jurisdiction as to Father Sheehan's absence, if in the diocese. The time Bishop Domenec left the diocese prior to his transfer to Allegheny, must have been in the fall or the beginning of the winter of 1875, for he returned in the opening spring of 1876; the division of the diocese of Pittsburgh occurred during his absence. Father Sheehan returned to Pittsburgh prior to the division of the diocese, I think; up to the time of the translation of Bishop Domenec to the diocese of Allegheny, I was Rector of the Cathedral and Vicar-General. I was administrator in the absence of Bishop Domenec, but of course lost that position on his return; I think the installation of Bishop Domenec, at St. Peter's, Allegheny, occurred on the evening of the 19th of March, 1876; Bishop Tuigg as Bishop, I think, had certain jurisdiction in the month of February, 1876, soon after he received the first intimation of his appointment, that as the inception of his jurisdiction as Bishop.

Cross-examination.

I could not tell the month when I first saw Father Sheehan after his return in 1875; Bishop Domenec left sometime in the fall of 1875 for Rome; whether he was here at the time of Father Sheehan's return, or not, I could not say; he was back again in the spring of 1876 in time for Bishop Tuigg's consecration as his successor; I was administrator of the diocese in Bishop Domenec's absence; I am not so positive whether I was administrator at the time of the return of Father Sheehan; if the Bishop had left for Rome I was, otherwise, not; I have an indistinct recollection of speaking to Father Sheehan after his return; I think there was an application made to me for employment; I did not act on the application; I cannot now remember my reasons for refusing to act; if the Bishop were present of course I could not act, except through friendship to speak to the Bishop in his favor; if the Bishop were absent, under the circumstances of the Bishop's absence on that special occasion my powers of administration were limited, more so than any former occasion. I was instructed by the Bishop to make no changes unless there was a necessity. Moreover, I was instructed not to act on my own personal responsibility, but in conjunction with the Episcopal Council, and I tried so to do; I did not see Father Sheehan, of course, in his absence, and as I have said, I have an indistinct recollection of seeing him in 1875, in the fall, and having this talk with him in regard to his restoration as a priest of the diocese; by "restoration" I mean his getting a position as a priest of the diocese; I think I promised or gave him some assurance in answer to that application, that I would do what I could for him; I have no knowledge of an application being made to Bishop Domenec; I presume after his return until Bishop Tuigg's installation as Bishop of Pittsburgh Father Sheehan was in Pittsburgh; I do not know what he was engaged at during that time; I had no reason to recognize him in any other capacity than as a priest of the diocese; *I think he did not perform the duties of a priest; why not, is a matter between Bishop Domenec and himself; I am not aware of the reason;* I knew he was not acting as a priest under me as Vicar-General; Bishop Domenec was absent part of that time and I was acting as administrator in his place; but my control was limited by the Bishop's authority before leaving for Rome; the limitation placed upon my powers was that I should make no changes, receive

no persons into the diocese, make no new appointments without great necessity; the reason I did not receive Father Sheehan, I presume, I had no special place to give him; I presume that was one of the reasons; I acted under instructions.

Q. Now, you were of course familiar with all the transactions and all the business of the Diocese?

A. To a certain extent, not all the business.

Q. Were not the priests all under your control with this limitation?

A. Well, I do not know what you understand by control; to a certain extent they were under my control.

Q. Did you not from your position there know that Bishop Domenec refused to recognise Father Sheehan as a priest of the Diocese at that time. A. No, sir.

Q. You have no knowledge on that subject?

A. No, sir; I have no recollection of it.

Q. You have no knowledge of it, have you?

A. No, sir; as I have no memory of it I cannot state a fact which I do not remember.

Q. You say you were controlled by the Diocesan Council?

A. That is, I was advised to consult with them before making any changes in the Diocese, or making any appointments.

Q. You could make an appointment by consulting them?

A. And I could without consulting them canonically, but I thought it more prudent not to do so, therefore I did not act in opposition to the instructions of the Bishop or the advice of the Council.

Q. You had authority to appoint him, but you thought it more prudent not to do so?

A. I thought it prudent to make no change, not in reference to Father Sheehan more than anybody else.

Adjourned to meet January 20, 1881, at 9:30 o'clock.

REV. FATHER HICKEY recalled and cross-examination continued.

The formal announcement of the division of the Diocese was not made until after the return of Bishop Domenec. I cannot give the date of the division because I have not seen the Roman documents

on the matter. I think I stated last evening Bishop Domenec took charge of the Diocese of Allegheny in the afternoon of March 19, 1876, at least the installation took place at that time. Prior to the time I gave Father Sheehan permission to be absent, as well as I can recollect, he was stationed at a place called "Cameron's Bottom," Indiana county. I really could not tell you whether Indiana county is in the Pittsburgh or Allegheny Diocese; do not know the line of division and could not answer without a little investigation. I cannot recollect the terms in which the letter was couched that I gave to Father Sheehan when he left. I presume it was a commendatory letter to the Bishops that he should meet in his travels. My recollection of it is that it was unlimited as to time.

Q. Did you promise him a place when he returned?

A. I said I would use my influence to get him a position. I presume Bishop Domenec was absent four or five months the last time he went to Rome. I could not state definitely the number of months. He left some time in the fall and returned in January or February, 1876. I have no recollection of how long after his leaving Father Sheehan called on me. Presumably he was three or four months in the diocese, unemployed, before the return of the Bishop. To my knowledge he was not exercising any of the priestly functions during that time; if he were, I presume I would know something about it. I know of no reason why he did not except the one I have already given, that he had no position on his return, as I thought proper to make no change or appointments to positions in the absence of the Bishop without a necessitous reason. Aside from an appointment, I know of no reason why he should not exercise such priestly functions as saying mass and others that priests usually exercise. I don't think he made any application to me to perform such duties or exercise such functions. I think he asked me to get him a position, or use my influence to get him one. I do not remember that he asked me to appoint him to any particular place. I had only limited power, but still, canonically, I had the power of appointment if I thought proper to exercise it. I do not recollect that I brought the case of Father Sheehan before the Diocesan Council for the diocese of Pittsburgh in my capacity as Vicar-General, and the presumption is that I did not.

Re-direct Examination.

When Father Sheehan returned, whether the Bishop was here or whether he had departed, I recognized him as a priest of the diocese of Pittsburgh. I could not answer positively as to whether, in point of fact, the Bishop had departed for Rome, or whether he was about leaving when Father Sheehan returned. At the time of his return I am not aware that there was any legal or canonical disability to the exercise of the priestly functions by Father Sheehan. I was the Vicar-General of the diocese from the year 1868 or 1869 until the division of the diocese.

Q. What was the practice of the diocese when the parish was not able to make up the salary of the priest?

Objected to by defendant's counsel, as the regulations in regard to the matter are in writing. Objection overruled, to which defendant's counsel object.

A. That is when a deficit occurred in the ordinary annual salary of the priest of a parish. First of all, the laws of the diocese requires a priest to receive in compensation for his services \$800 a year. That is the present standard of the diocese. In case a priest cannot recover that amount of compensation, owing to the poverty of his congregation, it is made up from two sources: the priest, with permission of the Bishop, can pay himself the deficit in salary from any moneys in his possession belonging to said congregation, no matter from what source derived; in case no such moneys can be had, the Bishop, as has been the practice and custom of the diocese, in several instances, the Bishop himself gave the deficit of salary to priests.

Q. When a man is not in immediate charge of a parish, but ready in calling on the Bishop?

A. Well, it has occurred occasionally that a priest may have to wait a certain length of time, a week or two weeks, or a month, in order to get his appointment. In that event the Bishop sees to his costs, or any expenses he may have to incur ordinarily. That has been the practice too. In case of sickness, and a priest have no money to pay his expenses at the hospital or other place, or even with his family, it is the duty of the Bishop as the head of the diocese, if the priest is in good standing, etc., to see that he is properly cared for, and that he gets his support; the Bishop is the mouthpiece of the diocese and is the representative of it in law. I

could name to my knowledge Fathers Scanlan and O'Rourke, two priests now dead, who received the amount necessary to make up the deficit of salary from the Bishop. I think also another priest, Rev. John O'Conner, received the same. I know also another priest who left the diocese on a leave of absence for several months, and traveled; I cannot recollect his name, but he is in charge of St. Patrick's congregation, Sugar Creek. He was an assistant priest at St. Paul's Cathedral, and I was authorized to pay him his salary coming due, although he had rendered no services during his absence, of course, to the Cathedral congregation. I cannot state positively, but my recollection is that Father Kearney was one of those that received a portion of his salary from the Bishop, in some of the far counties of the diocese. I cannot recollect anybody else just now.

Re-cross-examination.

I think, when I was commanding, the average number of priests was from 100 to 125, more or less. I do not know the exact number set down in the registry.

Q. Those allowances that were granted were a mere matter of grace and good will on behalf of you or the Bishop making them. Is there anything in the written law regarding diocesan salary that provides them?

A. Yes, sir; a written law provides that the Bishop shall provide a priest a congregation competent to give him a decent support. The competency in the statute law is \$800, and the Bishop is bound in his relation to the priest as Bishop to see that the priest gets that amount. If it is not forthcoming it is his duty to see that the priest gets it; no matter from what source.

Q. Upon the words of the statute law all that he is entitled to take and receive from the congregation is a certain sum and no more?

A. I have not read the wording of the statute lately, but I know that the stipulated salary is agreed on at \$800, which he is entitled to receive.

Q. All over that sum he is bound to devote to the poor or to charity?

A. No, sir; he is not bound to give it to the poor, or to apply it to the purposes of the parish. This law does not hold good in every case in our diocese, because I know some priests that, by the

permission of the Bishop, receive some thousands of dollars. The law is sometimes violated.

Q. (Book handed witness.) Look at that provision and see if it does not make the salary entirely dependent on the income from the congregation, and allow him to take and receive that much and no more. It is a limit on the maximum that he can take and receive and apply to his own use?

A. It says here, "If the pew rents are insufficient to make up the same, the priest is authorized to make good the deficit by putting to his own purposes the oblations or other offerings of the people, whatever they may be."

Q. Does it not also say that he can do that to a certain amount and no more? A. Yes, sir; to make good the \$800.

Q. And in case of an assistant, \$400?

A. Yes, sir; the statute also says that it is lawful for a priest in case the \$800 be insufficient to approach the Bishop, and if the reasons of the priest be deemed sufficient, the Bishop can increase his salary. So the law is not strictly binding. The Bishop makes the law in connection with the clergy of the diocese, and the Bishop has the power to rescind or modify, which he does at option.

Plaintiff's counsel offer in evidence books referred to by witnesses, being marked Exhibits A, B, C, D, E, F, G and H.

Objected to as to all excepting the decrees of the council of Baltimore and of the diocese of Pittsburgh, as being binding authority further than they are the writings of ecclesiastics and commentators upon the laws.

Plaintiff rests.

Judge.—In open court parties agree to submit and refer questions at issue in this suit to Hon. J. W. F. White, Associate Law Judge court of Common Pleas No. 2. of Allegheny county, under provisions of the Act of Assembly of 1874, dispensing with a jury.

See paper of reference filed.

And now, to wit, Wednesday, April 26th, pursuant to continuance, the above entitled cause came on for hearing before the Honorable J. W. F. White, Associate Judge of Court of Common Pleas No. 2, according to the terms of submission signed by the parties.

REV. FATHER SHEEHAN recalled by defendant and examined by Mr. McKenna.

Q. Your suit is for three years' salary, from March 19th, 1876, the date of the induction into office of Bishop Tuigg, the three years following. A. I think so, sir.

Q. Will you be kind enough to tell us the date of your departure from the territorial limits of the diocese after his, Bishop Tuigg's, installation?

A. It was, I think, in the commencement of April the year after; was over a year.

Q. You remained then, as I understand, a year in the boundaries of the diocese of Pittsburgh after his consecration?

A. I remained all the time except when I went to Rome to complain of Bishop Tuigg.

Q. Then, as I understand, you left for Rome in April, 1877, is that correct?

A. I must think of dates; I think so.

Q. You think it was in April, 1877, is that correct?

A. Yes, sir.

Q. And then you went to Rome. How long did you remain there?

A. I remained there until I come back here.

Q. Please give us how long you remained in Rome first?

A. I have not made up my mind to put in facts here; am I to answer Mr. Marshall?

By defendant's counsel.—We offer to show how long during these three years the plaintiff was without the diocese of Pittsburgh and beyond the jurisdiction of the diocese of Pittsburgh?

A. I came back to the limits of the diocese I think in the commencement of June.

Q. 1878?

A. No, no; I can answer by referring to my notes. At present I have not them here.

By the Court.—Are your notes here in Pittsburgh?

A. The dates are running through my briefs everywhere. It would take me so long to hunt them up. Until the agreement I was told by my counsel I had nothing to prepare except on canon law. I wrote to Bishop Tuigg the same week, sometime previous

to the school exhibition at St. Xavier's in the end of June. I have it marked down on the schedule.

By Mr. McKenna.—Your impression then would be that it was in June or July, 1879? A. Yes, sir, I think so, sir.

Q. Can you give us the approximate date when you left Rome?

A. About the second week in September, 1879, the same year, or the year before.

Q. That would be the second of September, 1878?

A. Yes, sir.

Q. That you left Rome?

A. I think about that, some time in September, 1878.

Q. Where did you go from Rome?

A. Why, I came here; I came to this country, and then I came to Pittsburgh afterwards, and I am here.

Q. Where did you come to this country; from what point?

A. Why, I came across on the steamer.

Q. At what point did you arrive here to remain?

A. I remained with my mother and sister in Virginia all the winter until I came to Pittsburgh, and I have remained here since.

Q. Where did you go from Rome; you say you came direct to this country?

A. Yes, sir; if you mean to say direct; I didn't fly across.

Q. What I mean is, you didn't tarry on the way?

A. Nothing more than usual for a man traveling, any gentleman.

Q. Did you remain in Liverpool? A. No, sir.

Q. Southampton? A. No, sir.

Q. London? A. I passed through it and was there a few days.

Q. Where did you land in this country—New York?

A. Yes, sir.

Q. How long did you remain there?

A. A few weeks; I don't just remember now.

Q. Did you come to Pittsburgh first or Virginia?

A. To Virginia.

Q. You remained there until the following June, 1879?

A. Until June, 1879, when I came here.

Q. About the time of the examination at St. Xavier's College?

A. A few weeks after. Previous to the exhibition I had written to the Bishop stating the fact. I had written to him previously, and he acknowledged it that he had received my letter.

Q. The three years that you claim salary for are—

A. From the date in my affidavit.

Q. 1876, 1877, 1878 and 1879, up to the beginning of this action? A. Of course?

Q. Then you came here in June, actually in June, 1879?

A. Sometime thereabouts, or perhaps the end of May.

Q. Now, up to the time of the bringing of that suit, where did you remain, from June, 1879, the first time that you got back to the diocese after your return from Rome?

A. In the city of Pittsburgh.

Q. You remained continuously in the city of Pittsburgh?

A. I believe I went across to Allegheny a few times at the end of my journey.

Q. You remained continuously in the diocese, I suppose?

A. That answers it, sir.

RT. REV. JOHN TUIGG sworn on behalf of the defense, and testified as follows:

Examination by Mr. McKenna.

I was consecrated Bishop of the Diocese of Pittsburgh on the 19th of March, 1876. Have known Father Sheehan for a number of years; I couldn't say how many years I knew him; I knew him as a student. I saw him before he was ordained a priest. Before my elevation to the Episcopacy I was a priest in this Diocese. I was a priest from May, 1850 to the 19th of March, 1876. In Bishop Domenec's administration I was one of his Court or Council for eight or nine years, and may be ten. A portion of the time I was not quite Vicar General for him, but virtually so.

Q. You can state in your own way now when the first application for a mission or appointment was made to you by the plaintiff, Father Sheehan, after your appointment as Bishop?

A. Well, I think that he applied to me by letter either the day before I was consecrated or the day after, but I think it was the day after. I didn't act on the communication, I was a little busy then and not very well initiated and I declined, and I didn't take

any action on his letter, but I recollect we had an interview, and at what time that was I could not say exactly, I was under the impression that it was in April or May, 1876, but it may be that I am mistaken in that, especially when Father Sheehan has asserted here the last time that it was in July or August.

Q. You can state what took place.

A. And in that interview he came and asked me what I intended to do for him, and I replied what do you want me to do for you, and he said that he wanted to be reinstated in a mission. I knew previously that he had been absent from the Diocese for some considerable time, and I knew that at the time I came here he was in the city at least four or five months doing nothing, going around, so I wanted to know whether he was suitable or not and I asked him if he had seen Bishop Domenec or if he had any letters. Now I won't be certain as to the answer he gave me about having seen Bishop Domenec, but I think he told me he had seen him and he referred him to me. I asked him if he could give me any letters of what he had been doing while he was absent from the Diocese, and he said he had no letters. I told him that though I was bound to learn or know something about him yet I was well disposed towards him and would give him anything I could after a trial, that he should retire to some religious house for some length of time, stay there for some time. He told me his health was bad and he could not do that well. I told him I could not do anything else for him, that he would have to give me either a trial. I might state in preface to these remarks he said he wanted me not to tell him to go to a religious house, and I told him that was the very thing I wanted him to do, I wanted him to give me some proof of his fitness for the ministry, a trial, a retreat into a house of that kind for one year.

Q. The only question is whether the father obeyed his instructions, whatever they were. Can you state whether Father Sheehan obeyed the instructions that you gave him?

A. No, sir; he said that he would not.

Q. Bishop, you can state now, or define your duties, as you understand them of your office; under the circumstances when he came to you.

A. Under the condition that he came I could not by virtue of my duty as Bishop employ him. He neither furnished me letters—

Q. What are your duties ?

A. My duties are the duties of every Bishop, which are to employ no person in the work of the ministry until he has a full conviction, or at least a moral certainty, that he is one ordained and is of age, and has the acquirements in knowledge and virtue which will fit him for that. The Bishop is bound to have some proof of that before he can conscientiously employ any priest in the work of the ministry. It was on account of the lack of satisfactory evidence that I declined appointing Father Sheehan. He failed to produce anything of any kind to show that he was qualified. Under the circumstances I could not in conscience give him anything to do in the ministry. Under my duties as a Bishop if I had appointed him to a mission, without satisfactory evidence of his possession of the moral and other qualifications that my office requires me to be convinced of, I would not have been performing my duty, and I would have been amenable to the highest authority of the Church for not doing my duty.

Q. Can you tell us what would be your duty to a priest applying for appointment under such circumstances as those you have narrated ?

A. My duty, strictly adhering to it, would be not to employ him, but I was willing to make a concession that if he would qualify himself by retiring somewhere or another for a year or so to some religious house and to fit himself to work. If Father Sheehan had complied with my instructions for a year or two I would have submitted to the expense.

Q. Is that the rule of the Church ?

A. Well, it is not the rule of the Church, but I was willing to make any concession I could to Father Sheehan, and to take care of him for many reasons.

Q. Now as you are familiar, from your long service in the priesthood, you might state what would be a priest's duty under such circumstances, making an application for a mission, and being denied the appointment, on his being advised or admonished by the Bishop to retire to a religious house ?

A. His duty would be to obey, according to the laws of the Church. That obligation is implied in the oath taken by the priest when he is ordained. A priest's obligation on ordination is to serve the mission during his life, and that obligation carries with it, of course, all the positive qualities that are necessary,

and the absence of anything that might be disqualifying to the work of the ministry.

Q. I mean now especially in reference to obeying the Bishop?

A. He must obey the Bishop. He takes that vow in the most solemn manner at his ordination, to obey and reverence his Bishop and the successor of that Bishop. That is in the form of ordination.

Q. I believe at that time your jurisdiction was confined to the diocese of Pittsburgh? A. Yes, sir.

Q. And simultaneously with your consecration Bishop Domenec was consecrated?

A. No, sir; he was installed Bishop of Allegheny

Q. You may state, Bishop, what would be the territorial limits of your jurisdiction as Bishop of the divided diocese of Pittsburgh, and if this place called Cameron's Bottom was in it?

A. No, sir; that is in the diocese of Allegheny, in Indiana county, in the diocese of Allegheny. It is in Indiana county and located in the Allegheny diocese.

Q. If Father Sheehan felt aggrieved, or thought you had made a mistake in refusing him an appointment, you can state from your knowledge of Church law whether he had any remedy or redress in the Church?

A. Yes, sir; he had a full remedy if there was any grievance inflicted. He never applied to me for any action or appeal.

Q. Do you know whether he applied to your superiors?

A. I think that I have conclusive evidence that he went to Rome, and also that he applied for redress in Rome. I have letters from the officials there.

Q. Do they prove that he had appealed?

A. Well, I can prove by those letters that I had the official evidence.

Q. You may produce them. (Here the witness produced two letters, one being dated January 31st, 1878, and signed by Cardinal Franchi, the other being dated May 2d, 1878, and signed by Cardinal Simeoni.) State who is Cardinal Franchi?

A. Cardinal Franchi is the official next to the Pope in the management of all church affairs. In other words, he is a delegate of the Pope to attend to these matters officially. This letter dated May 2d, 1878, is from Cardinal Simeoni, the successor of Cardinal Franchi, who is dead. I have official notice of all appointments made to that

office and have correspondence with them all the time. They are in the same handwriting as other letters that I have received from Rome since my consecration and apparently written by the same amanuensis. I have a literal translation of them; they are now in the hands of Dr. Quigley in court room.

Q. You have related the history of the first application to you?

A. Yes, sir.

Q. Did he make any other application to you? A. Yes, sir.

Q. State what would be your duty as a Bishop of the Catholic Church, when you found, on being consecrated as Bishop, a priest for several months in the term of your predecessor out of office, unemployed in clerical duties?

A. Well I could not recognize him.

Q. Just state your duty as a Bishop towards that priest in the case of his application to you for a mission?

A. Well, my duty in that case would be to refuse to recognize him at all until he would prove to me first that he was under the jurisdiction continued to me by my predecessor; and next, if he were from an outside diocese, not to recognize him until he had produced letters from his proper Bishop showing that he had a right to apply to me from the other Bishop, and if he did not give me the proof that all was as it should be according to the laws and canons of the church my duty would be to refuse him.

Q. In case of your refusal to reinstate a priest under the circumstances you have stated, and he would visit Rome and remain a year and return and reapply to you for an appointment, what would be your duty under such a case?

A. My duty in that case would be to honor the directions given by Rome, and if I got no directions from Rome to ignore him.

Q. What would be your duty in succeeding the Bishop of a diocese that had been divided with respect to the application made by a priest for reinstatement whose last mission was in the district of the new diocese and not yours?

A. Well, in that case the canonists themselves are divided, but I think it is conclusive that he would be in the position of an outsider applying to me for a position, because the jurisdiction goes with the territory, and all within the territory is given to the new bishop where he has the first appointment or installment. There is an established form for priests becoming affiliated with a new diocese—

an authorized form of affiliation. The form of affiliation is that the applicant brings a letter from the diocese he leaves showing that he is permitted to leave. It must be by letter, and if the application is entertained then the bishop who receives him can affiliate him with his diocese provided he brings the qualifications all together. The diocese of Pittsburgh was divided on the 19th of March, 1876, and that was the date I was consecrated. A certain portion fell to my jurisdiction as Bishop of Pittsburgh, and a certain portion to Bishop Domenec as Bishop of the new diocese of Allegheny, and the county of Indiana was in Bishop Domenec's diocese, the new diocese of Allegheny. On the 19th of March, 1876, I had no jurisdiction over Indiana county. It was in the new diocese assigned Bishop Domenec. The laws of the church where it is alleged that the bishop makes a mistake or is in error in his ruling towards a priest on his application for a mission, or any other favor or right that he might claim, afford redress in the church. There is every redress given, and the Bishop is amenable to the laws of the church as much as any priest is, and may be more so. The church has a complete set of courts or tribunals to hear and adjudicate these cases, and to adjust any injustice or impropriety of any kind. Any injustice of any kind has a full remedy in the church. That applies from laymen up. Even a layman can appeal. It has regular tribunals, and probably the best organized institutions on earth. The form of redress provided on taking an appeal for an aggrieved person or priest is that he can make a complaint to the Archbishop. He is the one who receives the complaint. It must be appealed to him before he can act on it, and if he is not satisfied with the Archbishop's decision he can apply to Rome, or he can do so if he refuse to hear the complaint, or if he is not satisfied with the complaint; and the suffragan Bishop, if the decision is not satisfactory to him, he can also appeal to Rome just as well as the priest. It works both ways then, and it is open to both sides to appeal.

Q. Take this rule of law, and if you reject or decline any application, take the case we are trying for instance, how should Father Sheehan have proceeded in the Church?

A. His course would have been to have appealed at once to the Metropolitan or the Archbishop, and if the Archbishop saw that the appeal was regular and in order, his duty would have been to cite the Bishop and to hear both sides of the case.

Q. There is a co-ordinate jurisdiction given, could he appeal direct to Rome?

A. Do you mean by that an equal jurisdiction?

Q. No, what I mean is a person can appeal direct to Rome over the head of the Archbishop. A. Not now.

Q. I mean that at the time of your refusal to appoint Father Sheehan to a mission, could he have appealed direct to Rome?

A. At that time, in 1876, yes, sir; but we received instructions in July, 1878, whereby the appeal must go through the regular tribunals of the Church before Rome must decide it. At the time of my refusal to instal him or reappoint him he could have applied direct to Rome. By the form he could go there and make the complaint in person as many do against the Bishop. In that case Rome would address the party complained of, stating that such and such facts were alleged. Rome would never act until they had heard both sides of the case. Then they would say such and such is the law, and when Rome speaks the case is over.

Q. In going to Rome would the person be required to show any papers, or that he had filed them with you?

A. Generally speaking, it is supposed that the person from whom the appeal is made is notified of the fact.

Q. Who must give you the notice?

A. Why, he must, the person who appeals. An appeal lies from any action of the Bishop. Any or all actions of the Bishop are subject to the criticism and to be adjudicated by the higher tribunals, at the instance of priest or layman. At the time I rejected this application I certainly acted within the law of the Church.

Cross-examination.

Q. You being the successor of Michael Domenec as Bishop, would a priest, a member of this diocese, require any certificate of character from you before he would have his title of office or to a salary? A. If he were on a mission, no, sir.

Q. On or off a mission, so he is a priest of the dioecese?

A. Oh, yes, sir.

Q. Please certify me to any book in the Catholic Church that says anything of that sort. Just cite me the law that a priest under your predecessor requires a certificate of character before his title to salary runs.

A. I didn't say that, Mr. Marshall, in place of character say fitness.

Q. Character and fitness are the same thing. Just show me any book that requires a previous priest of the diocese—that requires a certificate from the Bishop of the diocese in regard to the character and fitness of the priest until charges are made or something is brought to the successor's official notice. Just give us the book or law?

A. I certify to the fact that such is the law of the Church. I cannot give you the authority. I have it not with me.

Q. Now, sir, ain't it the elementary law in the Catholic Church that there is no death of the Bishop, that the office always exists, continually? A. Yes, sir.

Q. If the office of the Bishop is always alive and active, how can the mere death of the occupant change the relations of the priest?

A. You will understand me, when I say the Bishop exists always, the judge of this court exists all the time, though the judge is no longer judge. The office continues, but the incoming incumbent will have to see that everything is done properly. I am familiar with the Second Plenary Council of Baltimore.

Q. I hand you that book and on page 57 is it not enacted by the Second Plenary Council of Baltimore and expressly laid down that the support cannot be taken from a priest without a trial?

A. Without a trial?

Q. Yes, sir? A. Well, I don't know that.

Q. Does that book not say so?

A. That book is qualified, sir. There is a difference in taking away support and giving a man support that has already lost it.

Q. But can he lose his right to support otherwise than by trial?

A. Yes, sir.

Q. Ain't this the law, "Finally from these councillors the Bishop may choose, if it seems proper to him, the judges who are to adjudge, by episcopal delegation in the first instance on priests under indictment according to the law or rule prescribed by the Synod of St. Louis in 1855 and revised by the Holy See, and which the fathers of this Plenary Council enact as that of the common law?" A. Yes, sir.

Q. Isn't a trial necessary before you can take away the support?

A. I make a distinction. He is, certainly, unless he is guilty of some crime that the Bishop must take cognizance of immediately, but there is a difference between taking away an office from a man who already has one and that of giving a new position to a man who is without one.

Q. Mission or no mission, he is entitled to his salary, is he not?

A. If he conduct himself properly.

Q. He cannot be found as not having conducting himself properly without a trial? A. Yes, sir.

Q. Where is the law for that?

A. The law is on absence out of his mission.

Q. Just show us the law where his support can be taken away from him without his being tried.

A. Well, Mr. Marshall, I will read it to you. You will find it on page 75, No. 109.

Q. Now translate it.

A. (Witness translates as follows:) "We define and declare that each priest of whatever province thus ordained, is bound, by virtue of the promise of his ordination, to serve that diocese and to submit himself to his Bishop continuously until he is canonically dismissed." That is the substance of it; it may not be exactly. "And we define also that the same obligation is binding on every priest who is rightly affiliated in any diocese; and we declare that each priest coming from another diocese, immediately present his dimissorial letters of the Bishop, to whom he was subjected to last, and that that priest exhibit these letters to the Bishop under whom he wishes to place himself."

Q. Now let me put this question to you. Bishop, suppose a priest had been in Indiana county and had left that mission, and had severed his connection with that mission for several months before the new diocese was created, he was a member of the diocese of Pittsburgh and was in no particular mission, would you say that when you came to succeed Bishop Domenec that you would treat him as a foreign priest. A. I do not understand your question.

Q. Suppose Mr. Sheehan had been connected with the Indiana county mission before you became Bishop of Pittsburgh, before your predecessor had the diocese divided, would you treat Mr. Sheehan

as a foreign priest because sometime before he happened to be in the part allotted to the Allegheny diocese?

A. I would treat him in this way, I distinguish—

Q. I want to know how you would make a foreign priest out of him when he was a priest of the diocese of Pittsburgh and not attached to any particular mission.

A. Because I would think that the jurisdiction went with the territory in which he was last employed.

Q. Do you say that the territory or place in which he was last employed in office affects his allegiance? A. I would think so.

Q. Give us any authorities for that.

A. The general law of the church; the common principles of the church. If you don't allow me to have recourse to the authors I have a gentleman here who will prove that such is the law.

Q. You think that you can prove by a gentleman here that if a priest happened to be located in the town of Butler, a priest of the diocese of Pittsburgh, and he had given up his parish in Butler and had gone away, severed his connection with it, and he was residing in the city of Pittsburgh when the division occurred, he would be a foreign priest?

A. I would distinguish, if his severance from that mission was canonical I would entertain his application, if his severance was uncanonical I would not entertain it.

Q. Don't he belong to the diocese as much as though he was attached to St. Paul's? A. No, sir.

Q. Show us any law.

A. I certainly could not give you a quotation now, but such is the law of the Church.

Q. Bishop, will you be kind enough to turn to No. 77 on page 57, and listen to the translation which I will read to you, and see if it is not a literal translation from that book. "Finally from these Councilors, the Bishop may choose, if it seems proper to him, the *judices causarum*, 'the Judges of Causes,' who are to adjudge by Episcopal delegation, in the first instance on priests charged with offences, according to the rule prescribed by the Synod of St. Louis held in 1855, and revised by the Holy See, which process the Fathers of this Plenary Council enact as that of the common law. Priests to whom the exercise of the priesthood may be interdicted by the sentence of the ordinary, have no right to seek support from

him as they have rendered themselves by their own fault disqualified; but in order to take away all cause of complaint the Fathers resolve that it is absolutely expedient that a certain judicial form which approaches as near as possible to that prescribed by the Council of Trent be observed by the Bishop."

A. I don't find one-half of that in this text.

Q. Just follow me. "Finally the Bishop may choose out of these Councilors, if it seems proper to him, the *judices causarum*, 'the Judges of Causes,' who are to adjudge by Episcopal commission in the first instance the priest charged with the offences."

Q. "In the first instance, on Priests charged with offences, in accordance with the law prescribed by the Synod of St. Louis, held in 1855, and revised by the Holy See, which process the Fathers of the Plenary Council enact as that of the common law." Now comes the decree. "Priests to whom the exercise of the priesthood may be interdicted by the sentence of the ordinary, have no right to seek support from him, as they have rendered themselves by their own fault disqualified from missionary employment, but in order to take away all cause of complaint the Fathers resolve that it is absolutely expedient that a certain judicial process which approaches as near as possible to that prescribed by the Council of Trent be observed by Bishops concerning charges against priests and clerics, viz: the Bishop or his Vicar-General by his commission selects two of the aforesaid councilors, changing them from time to time, who are to be assessors with him in adjudging on a priest charged with fault, and this in the presence of the Bishop's notary. Both have but one voice, one, however, may vote for the Bishop, if the two should dissent from the Bishop or his Vicar-General then the Bishop may appoint a third from the aforesaid councilors, whose voice decides the case. Should it happen, however, that all the councilors appointed by the Bishop dissent from the Bishop the matter is to be referred to the Metropolitan who is to examine the merits of the case and render a verdict."

A. That is all right. The law which has just been read is universal in this country except it is modified. That was modified the 20th of July, 1878, by an instruction issued by the proper authority to the Bishops of this country.

Q. That instruction was merely a modification of the matter of trial, but not of the fact of the trial?

Re-direct by Mr. M'Kenna.

Q. You could hardly be called a successor of Bishop Domenee ?

A. No, sir. The word successor implies that the predecessor is dead or canonically removed.

By the Court.—Q. This was a division of diocese ?

A. A division of the Diocese.

Q. I understood you that the territory carried with it jurisdiction ?

A. Yes, sir, government. By that I mean this, that when the Bishop gets a certain territory for his diocese he gets the jurisdiction over all of that which the diocese is in, and when a portion is taken away and a new diocese is created of course it is cut off with it, and he loses it, and has only that which is left. I am Bishop of the Pittsburgh diocese, and have the jurisdiction over all that diocese; jurisdiction wherever it is to be exercised, and nothing in that mission or in that territory could go with the new diocese of Allegheny.

Q. Then a priest who is not at work, but whose last place of work being in the limits of the newly-erected diocese, where does he belong ?

A. That is a question. I think he would belong to or go where he was last on a mission. That is the usage of the Church. There was no practice of this diocese before mine, and that is what is found fault with. My practice is governed by the general law of the Church.

Q. A priest that was absent with proper leave from his parish and the diocese was divided during his absence, to whom should he report on his return in case of a division of the diocese where his last mission was; to the new Bishop of the old diocese, or to the Bishop of the new diocese ?

A. I would think, sir, that he should go to the Bishop that has charge of the territory that he was in last.

Cross-examination Continued by Father Sheehan.

In speaking of the duties of a Bishop it is his duty to observe the canon law. It is a duty of the Bishop to obey the canon law of the Catholic Church. Every Bishop in this country, as well as elsewhere, swears that he will obey the canon law as far as he can. What I mean by "as far as he can," is that there are circumstances, that is according to circumstances. The Bishop is to be the judge accord-

ing to circumstances. As far as he can, the Bishop is obliged to interpret the canon law, and to observe and obey it. He swears at his consecration that he must obey as far as he can, and wherever he can, is as far as he can. I have taken the oath of consecration to obey the canon laws and other laws of the Catholic Church as far as I can. I cannot say if the words "as far as I can" are contained in the oath. Let me see the oath and I will tell you. I don't recollect any such words being in the oath. An oath is expected from and exacted by the Holy See for every Bishop to take at the time of his consecration. I don't see what bearing the form of that oath has on this question. I cannot give the form to you, but give me the oath and I will interpret it. It certainly is the duty of the Bishop to know the extent of the oath that he takes. I know the extent of that oath. I have not the book here.

Q. Are the words "as far as you can" a mere distinction of your mind or mentioned in the oath?

A. Not of the oath; there is no obligation to bind a man to do a thing he cannot do.

Q. An observance of the law is not impossible according to the law of the Catholic Church? A. Sometimes it is impossible.

Q. I thought it was a principle of Catholic law that no one could make a law impossible?

A. Sometimes it is possible for some, and sometimes it is impossible. Relatively it is sometimes impossible.

Q. Then a Bishop can take an oath at his consecration that he will observe and obey the canon law and afterwards he can distinguish whether such law be possible so far as he can or not?

A. No, sir, there is no distinction; he is to obey so far as he can, for there is no obligation to bind a man to an impossibility, it does not bind here or anywhere else. A knowledge of these laws and this duty is part of the duty of the Bishop.

Q. The law you gave in your testimony, that the law of Baltimore was superceded—

A. No, sir, it is not superceded by any means; the manner of the trial is modified; it is the mode of trial. There is a law of trial in the Council of Baltimore, and it is a common law of the country, and no person can be interdicted in the exercise of his functions without that trial. A person that is accused of crime has

a right to a trial if he has asked for it, but the Bishop can supercede a priest without any trial at all or without telling the priest of it.

Q. You say, now, that according to this law on page 57 of the Second Plenary Council of Baltimore, can a bishop without a trial interdict a priest from the exercise of his priesthood by this common law?

A. By the common law. You will allow me to say that here in this quotation where the case of a priest comes up for adjudication it refers to a priest that is accused of a crime, and the bishop is ordered as to the manner of giving that priest a trial. Well, now, if you will allow me, Father Sheehan, I think that this provision is intended to give fair play and a fair field to any priest who is accused of a crime to defend himself, to show whether the accusation is right or wrong, and then it is directed by this enactment that the bishop institute a trial, if the criminal demands it. The bishop is not obliged to offer it. The criminal has to ask for it. The bishop is directed as to the manner in which this trial is to be instituted or carried on, and particularly if the crime be of such a nature as to criminate a priest in his morals; and no man has a right to be deprived of his business or of any inherent qualities in him until he is proven guilty. Mere accusation will not do in the eyes of the Council or of the Church. The bishop is obliged to give a man an opportunity to defend himself if he can defend. It is a common law according to that decree.

Q. The common law as specified in that Second Plenary Council of Baltimore requires a trial of a priest before he can be interdicted in the exercise of his ministry?

A. I distinguish. I make the distinction, and it is this: There is no statute that contravenes another statute. There is no law that will contradict another in the Catholic Church. You know that. Now if a priest be interdicted from the exercises of the ministry by the bishop, according to this law he has his redress.

Q. Does that law or does it not state that the bishop cannot do it without trial previous?

A. He cannot, sir, provided the case can be brought up for trial. But you know there are some things that won't do.

Q. On that question there is it not required by that law that a trial as described there is necessary by the common ecclesiastical

law, which states that before a priest can be interdicted in the exercise of his ministry a trial must be had?

A. It is not required by this law. I object to this translation submitted here, at first I overlooked the word. The very word that qualifies this law you omit, and the case is this, sir, that it refers altogether to *criminal causes* against the priest. "*Causas criminalibus*," that is left out, that word is not in, and it is not a correct translation that you give. Please read it.

Here Mr. Watterson read as follows: "And finally the Bishop may choose out of these councilors, if it seem proper, '*Judices Causarum*,' the Judges of Causes, who are to adjudge by Episcopal Commission, in the first instance, on priests charged with offences, in accordance with the law and process prescribed by the Synod of St Louis held in 1855, and revised by the Holy See, which process the fathers of this Plenary Council enact as that of the common law. Priests to whom the exercise of the priesthood may be interdicted by the sentence of the Ordinary have no right to exact a support from him as they have rendered themselves by their own fault disqualified from missionary employment. But in order to take away all cause of complaint the fathers resolve that it is absolutely expedient that a certain judicial process, which approaches as nearly as possible to that prescribed by the Council of Trent, be observed by the Bishop concerning charges against clerics and priests.

By the witness.—A. Now the words omitted there are "*causas criminalibus*." (Mr. Watterson continues) "The Bishop or his Vicar General by his commission selects two of the aforesaid Councilors, changing them from time to time, who are to be Assessors with him."

By the Court.—Q. I understand Bishop Tuigg to say that the adjective "criminal" is omitted.

By Bishop Tuigg.—A. Yes sir; that has been omitted in the translation, just read. Now let me say one word further. My remark is this, your Honor, that a late instruction from Rome, dated July 20, 1878, to the Bishops of this country changes the form of this trial a little, but not in substance, in this way, that there can not be a third party added. There is a common law for trial. I certainly have admitted all that. There is a right of support from any Bishop mentioned in this law.

Q. A Bishop is bound to support a priest ?

A. If he conduct himself as a priest should.

Q. If he is not interdicted, the book says.

A. No, no, Father Sheehan. When he has all the qualities becoming a priest and becomes disabled on the mission through no fault of his own, the Bishop will take care of him. It is not in this law before me that if a priest be not interdicted in the exercise of his ministry, and he cannot be interdicted without a trial. It is not down there that the Bishop is bound for his support ?

Q. Is that the law ?

A. That is the law ; the common law, so far as it goes. The common law gives a trial, but without that trial a priest can be interdicted.

Q. And without the priest being interdicted in this manner, does not that law say he has a right to that support ?

A. Yes, sir ; but do you mean to say that this is the whole law ?

Q. No, sir ; under what other law of the Catholic Church could it be ?

A. Under the law commonly called "*ex informata conscientia*." I will tell you what it means. The old law whereby a Bishop is empowered to withdraw faculties, and suspend the priestly functions for a time, is a law founded on what is called technically "*ex informata conscientia*," or a consciousness or knowledge sufficiently well grounded to induce him to believe that the priest, from the private knowledge he has, is not what he ought to be, and that Bishop has power "*ex informata conscientia*" to suspend that priest and deprive him from the exercise of priestly function, some say for six months, but generally speaking to a greater extent for one year, and that does not require a trial at all.

Re-direct by Mr. Barton.

Q. Has the priest a right to demand a trial ?

A. Not for six months, or for a year, and then he has.

Q. Are there any formalities required for the exercise of this summary process ?

A. The only formality required is that he has to notify the priest in whatever form he thinks proper, generally in writing, and it is only for a certain period.

By Father Sheehan.—Q. It must be for crime ?

A. I am not going to tell for what. If he has sufficient knowledge privately he can act. Any priest knows where this law is to be found. I have the Council of Trent here. Now there is the letter on the Instructions of July 29th, 1878, there were some doubts about it, and the Congregation is asked for instruction and explains some things regarding that instruction, and here are some of the answers given to the questions. Now here is the answer. I will read it to you in Latin. I suppose all here will understand it. By the Instruction the extraordinary power is not taken from the Bishop. The question was asked by the instruction of July 29th if the extraordinary power of suspending "*ex informata conscientia*" is not taken away, as they say, a grave and urgent necessity for the salvation of souls might suffer, and great injury to them intrusted to their care by following out this long and tedious process of trial. It sometimes takes them seven or eight months, and in the meantime the souls of the people would be destroyed, and the Bishop has that extraordinary power.

By Defendant's Counsel.—Q. In the law of '78 that right or power was reserved?

A. Certainly; it was never taken from him.

Q. State what paper that is?

A. Well, I would call it a sort of comment or explanation of the paper of July 20th. [For Papers Instruction of July 20th, 1878, and Paper Resolution of Doubts and Construction of Parts of Same, see testimony of Rev. F. P. Ward attesting translations called by defendant.]

By Plaintiff's Counsel.—

Q. Has the Bishop the power to suspend "*ex informata conscientia*" as an ordinary Bishop?

A. As a Bishop in charge of a diocese, he has, sir. The Bishop alone, without delegation, has the right to suspend *ex informata conscientia*. The power is inherent in the episcopacy by the laws of the church. There is the law. It is not the fact that it is as delegate of the Apostolic See that he gets this power. He gets that as Bishop when he is appointed to take charge of the See. He gets it as a Bishop when he gets charge of the diocese. That law is within his reach and he can use it for the same reason, that the trial might take a very long time in order to suspend a person that is doing harm. All he tells the priest is that he is suspended "*ipso facto*"

on the receipt of his letter, by virtue of the power inherent in him, as one who can exercise the power "*ex informata conscientia*," and he as Bishop suspends him. I will not admit anything at all, outside of the episcopacy, as a delegation for the exercise of certain powers in this episcopacy, for the good of souls, and it is the duty of the Bishop, a strict and ordinary duty, to remove him at once, and he is strictly bound before God, and before his superiors in the Church, if he allowed a priest to go on that was doing harm, and his superiors would make—I tell you he would hear something if Rome knew that it was going on and he allowed it. He would soon hear from Rome.

By Father Sheehan.—Q. I want to find out, because if it is a delegated power it must be exercised according to the intent of the delegation. Is this power granted as a delegation or not?

A. This would be a power outside of the general function and general powers and authority of the Bishop. That is a delegated power and if he got a delegation he must go according to the delegation, and no more outside of it.

Q. I want to find out whether a Bishop, as an Ordinary of the diocese, or as a mere delegate of the higher power, can he suspend "*ex informata conscientia*?"

A. As the Ordinary in charge of the diocese he can suspend without delegation, and stating it. He has that when he is inducted in the diocese, and he gets that with the rest, though it may be an extraordinary case that calls for it. If you say that is an extraordinary case, then it is an extraordinary power, true, and every Bishop has it.

By the Court.—He says it is inherent in his office.

By the Witness.—A. It is inherent.

By Plaintiff's Counsel.—Q. Can a person be ordained a priest in the Catholic Church without having a previous guarantee of decent support?

A. Well, that depends under what title he is ordained. The Church is pledged to see that there is a sustenance allowed for her clergy, because a clergyman is supposed to devote his whole life to the salvation of souls and he cannot be going around looking after support.

Q. Is it not insisted that this guarantee be previous to ordination?

A. If it be concomitant with ordination—if the Bishop is satisfied that support is to come, if the man is satisfied with the title or *titulous* he is given for support, then the ordination can go on.

Q. Is it optional to ordain a candidate without having previously ascertained—when he has not sufficient support?

A. That is not optional with the Bishop.

Q. And each candidate before he is ordained a priest, his title to decent support is guaranteed to him?

A. The Bishop must see that he has support.

Q. This title is never in abeyance; that is, this title takes effect, does it not, at the time of the ordination of the sub-deacon?

A. Yes sir.

Q. The title of decent support must be therefore in possession?

A. It must be in possession. He cannot be ordained until that be secured.

Q. You deposed that the last place a priest had officiated in prior to the division of the diocese that is the place to which he belongs?

A. That is the presumption. The law of the Church dividing a diocese will give to the Bishop of the divided diocese whatever part is cut off, and will give him jurisdiction over that territory and everything belonging to the Church in it, and if a man be exercising the priesthood in any portion of it at the time of the division it will be presumed that he cannot renounce the allegiance due to the new Bishop, because the Bishop can claim it, and if he can claim it he cannot renounce it.

Q. Is there any law, that a priest that leaves when the diocese is one and his resignation is accepted, that because the last place that he resigned is in the other, any law that he forfeits it—is there any law or custom?

A. I really think there is. If I don't mistake, it seems to me there is an instruction by the Propaganda to this country, that once a priest resigns his living that he is to get another title before being installed.

Q. The resignation of a parish, do you call that a resignation of the title that you are ordained for? A. No, sir.

Q. Then the resignation of the parish is not a resignation of the title?

A. Not a resignation of the title.

Q. Is there any law or custom of the Catholic Church that says that because the last place you were at was on the territory that was cut off of the diocese that this priest is severed from the original diocese, any law or custom?

A. I think that the custom is that if the priest be in the territory at the time, that he belongs to that territory and is under the jurisdiction of the Bishop that gets charge of that territory. I said before, we were only beginning customs here.

Q. You have no custom here that a priest living at the time on the Allegheny side and leaving that diocese and residing here at the time of the division, having resigned his parish, that he goes with the territory in the last place where he officiated?

A. The question is disputed, and I take it that the Bishop is entitled to the advantage of a doubt as well as the priest. I don't know of any custom bearing on this point at all, in this diocese. At the time of the division of this diocese, any priest belonging to this side, could not be transferred without my permission.

Q. Is there any law about a priest on a mission and one that had not a mission?

A. Yes; a priest that is on the mission or that is absent canonically with the approbation of the Ordinary, belongs to the diocese; but a priest who is absent, and who has never accounted at all for his absence, does not belong to the diocese.

By the Court.—Suppose a year before the division of the Pittsburgh diocese a priest had a mission in what was the Allegheny portion after the division, and he had resigned that position, or congregation, with the approbation of the Bishop of the diocese at that time, the whole diocese, he then locates himself and is living in the territorial boundary of the Pittsburgh district as it is divided, and has been living within the boundaries of what constitutes the Pittsburgh district for a year before the division, to which diocese does he properly belong?

A. Exercising the functions of the ministry during the year?

Q. Not doing a thing, living in the Pittsburgh division?

A. If he was living in the Pittsburgh division, and if he be canonically away, having had full permission to retire from any cause, if he has canonically released himself, and if he can establish his fitness to exercise the ministry, and he comes and states this to the Bishop, the Bishop is bound to recognize him, but if he fails to prove his fitness—

By the Court—I mean a priest in good standing?

Q. Then would the fact that the last regular mission that he had was in what was in the Allegheny portion of the district, determine his location as in that district if he was in good standing?

A. No, sir.

Q. Then the mere fact of having resigned the congregation in Allegheny is no evidence that the priest does not belong to Pittsburgh? A. No, sir.

By Mr. Watterson.—Q. Suppose a priest had been in the Allegheny diocese and had resigned his mission there, and his resignation had been accepted by the bishop, and leave of absence had been given him and he had gone away and remained for a year, of course with the approbation of the bishop, upon his return he makes an application to the bishop for another mission, for another parish—I am just taking one bishop—he makes an application to the same bishop for another mission, to whom would he belong?

A. Well, he would belong to the bishop under whose jurisdiction he was when he went away.

Q. Supposing, now, that after that the diocese had been divided, to which diocese would he belong?

A. I told you that, that is disputed. That is a question that the canonists dispute. There is a doubt, and the bishop has as good a right to take the benefit of that doubt as the priest.

By the Court.—Q. I make the application here, that during Bishop Domenec's time Father Sheehan had a mission at Cameron's Bottom, and he resigned the mission and the resignation is accepted, gets leave of absence and is gone, with the approbation of Bishop Domenec, but before his return the diocese is divided?

By the Bishop.—A. Why, he certainly belonged to the bishop he belonged to before he went away. If he leave with the permission of the Bishop of Pittsburgh, and he stays away whatever length of time the bishop tells him he may, he belongs to that same bishop. The same bishop that let him go must take him back again, but that bishop is bound to see whether he is fit to be placed in charge of a mission.

By the Court.—Q. Suppose Father Sheehan had charge of a congregation at Cameron Bottom, and the whole of the Pittsburgh diocese, the whole territory was one. that his resignation is accepted, and he has leave of absence, and during his absence the di-

ocese is divided, and there still remains the Pittsburgh diocese, and the bishop of the Pittsburgh diocese and the new diocese formed called the Allegheny diocese. and Cameron's Bottom falls within the territorial boundary of the last named diocese, don't he still belong to the Pittsburgh diocese.

A. That is a point, your Honor, that I am not prepared to answer positively, I have consulted canonists on that point, and they are divided in opinion. Some hold that he belongs to Pittsburgh diocese, and others hold that he belongs to the diocese of Allegheny.

By Plaintiff's Counsel.—Supposing a priest leaves before the division of a diocese and he returns before the diocese is divided, what diocese does he belong to?

A. That depends upon the manner of his return.

Q. The question that I ask is this, to whom is a priest that leaves even with or without permission—even with or without permission a priest leaves, and he stays away for twenty years, and he comes back, and when he comes back it is the same diocese—and in a few months afterwards it is divided, to what diocese does he belong? He has no permission, has uncanonically left, has been away for twenty years, what diocese does he belong to?

A. He is a subject of the diocese that he was in when he left. He is under the jurisdiction of that Bishop.

By the Court.—At the time of the division of the Pittsburgh diocese suppose a priest in good standing is residing in the Allegheny district, but is not actually at work, was living there, that is his residence, that is his home, does he not belong to the district of Pittsburgh?

A. If he was not exercising any of the faculties of the priesthood there, my judgment would be that he really belongs to the Bishop that has charge of the district in which his home is. If his home is in Allegheny, to Allegheny, and if his home is in Pittsburgh and there is a division between Pittsburgh and Allegheny, then he belongs to Pittsburgh, if he has a "*bona fide*" home there.

Q. After you were consecrated suppose you wanted the service of one of the priests on the Allegheny side of the river, would you have to get him transferred from the new diocese by Bishop Domenec?

A. Certainly.

By Defendant's Counsel.—And he would have to present papers?

A. Yes, sir. There were some such exchanges made, some priests,

I believe, from Allegheny to Pittsburgh; but they were all with the mutual consent of the bishops.

REV. FATHER P. F. QUIGLEY sworn on behalf of the defense and examined by Mr. M'Kenna.

Q. Doctor, where is your residence?

A. My residence is in Ohio, in Cleveland. In that city I am located in the Theological Seminary.

Q. Of the diocese of Cleveland?

A. Yes, sir. The Theological Seminary of the diocese of Cleveland.

Q. How long have you occupied that position, and what is it?

A. My position there is that of a professor; I have been in the Seminary since I was a boy, with the exception of three years that I was in Europe studying, and one year passed as a pastor in Cleveland diocese.

Q. Where did you prosecute your studies?

A. In Cleveland, for about twelve years, and after being ordained priest in 1869, in the city of Rome, at Collegio Romano, for three years.

Q. I believe you have the title of Doctor of Divinity. Where was that conferred?

A. It was conferred by the Jesuits in Collegio Romano, at Rome.

Q. You attended that institution?

A. Yes, sir. I made the course of studies there.

Q. Did you make a special study of the canon law of the Catholic Church?

A. Yes, sir. I attended lectures on canon law as taught there. I have given some little attention to canon law since then as Professor in the Theological Seminary in Cleveland, where I was required to teach, among other branches, that branch known as canon law. I have been in that position as a professor for nearly eight years.

Q. Have you written any works on the subject, or reviews?

A. Well, no, sir. I have not written any works for the public excepting perhaps a little criticism on a work that appeared; I criticised it in the columns of the *Catholic Universe*, of Cleveland,

and subsequently the criticisms were published in the form of a pamphlet.

Q. That was Dr. Smith's work. I presume?

A. It was a criticism of that work of Dr. Smith's which is known as the *Elements of Ecclesiastical Law*.

Q. Published in English?

A. Published in English. It is, for the most part, and so far as it goes, a mere translation of the well known work, "*Manuale Totius Juris Canonici*, of Craisson," the Vicar-General of the diocese of Valence, in France. The work is in four volumes. The work of Dr. Smith covers almost the entire ground taken by two volumes in that work. I thought there were some things in the first edition of Dr. Smith's work against the law.

Q. Is Dr. Smith's work an authority on canon law as applied to the United States?

A. So he claims. Let me state here that one of the great mistakes made by churchmen in this country and by a great many members of the legal profession, is this: They suppose that canon law is a body of law made for the Church only in the old civilizations. This is a great mistake. Canon law is simply the law of the Church, and as the Church is a society it must have a code of laws. There is no society without a code of laws. There is no society that is not possessed of the three-fold power, legislative, judicial and executive; therefore from the very existence here of that society known as the Catholic Church, there were introduced into this country the laws of the Church. The society carries with it its inherent rights to legislate regarding local wants, and is necessarily subject to all those rulings in the canon law which are enacted for the universal Church. We might take as an illustration the case of the common law of this country as recognized throughout the United States, and the statute laws of a given State. So it is true that there are in the Church laws which are of force everywhere, and diocesan laws made by the legislative authority in the diocese and which have force only within the limits of that diocese and affect only those who are subjects of that diocese. Then provincial laws—the territory which we call an Ecclesiastical province being that territory which is subject to the jurisdiction of an Archbishop and as many suffragan Bishops as may be assigned to him by the authorities of the Church. Provincial laws are of force in the province.

Then we have the laws enacted by the Bishops of the United States assembled in Plenary Council. These laws are of force throughout the entire Union.

Q. Have Bishops power to make laws?

A. Yes, sir; a Bishop, by force of his office, is possessed of legislative power as regards his own diocese. A general assembly of the representatives—the Bishops—of the province have power to legislate for the entire province, and providing they have complied with the general laws of the Church—I mean submitted their enactments to the judgment or recognition of the Holy See, and provided they have obtained such recognition their laws are obligatory throughout the entire province. This is likewise true of the laws of Bishops of all the provinces.

Q. That is what we call a council?

A. We call such an assembling of Bishops in this country a plenary council. Some people call it “national” council. We do not like the term “national,” because we belong to the Catholic Church, and the term “national” has been the fountain of serious difficulty in our Church, so we call this council a plenary council, as it comprises representatives of all the provinces throughout the United States. Regarding the question you have put about the power of Bishops to legislate, let me repeat the proposition that our Church is a society comprising a certain number of individuals bound together by a moral bond for an important end, and having a designated object which by a common means they try to reach. That object of course determines the nature of the society. A civil object determines the nature of a civil society; so, too, the spiritual object defines the nature of the spiritual society, or in other words, we find in the object the nature of the society. Now we have this society, a society called the Church. It is a perfect society. I mean by a perfect society that it is complete in itself. It does not depend upon any other society for any part of its organization. It is supreme as a society. I say its object is spiritual. In all spiritual matters—matters of faith and morals—it is supreme. We recognize no superior. We recognize no equal. We recognize no civil jurisdiction over matters which are essentially ecclesiastical—over matters which necessarily belong to the domain of faith and morals, and over matters which are of their nature included within the sphere of the Church. In other words, we defend the proposition that we must

give to God what belongs to God. If speaking of duties to the state or civil society, we would defend with equal truth, and under sacred obligations, the rest of the proposition that we must likewise give to the State all that belongs to the State. Now our Church as a society is possessed of the legislative power, the judicial power and the executive power. There is no society without laws. Every society must have power to make laws. Laws, even when enacted, are useless, unless there be a judge to apply the laws to actions, to sit in judgment and declare that a given action comes under a given law. There must be the judiciary department. There must be judicial power.

Again, laws, even when enacted, and actions which, under proper adjudication are set down as coming under the laws, are not in themselves sufficient to establish or to perpetuate a society, wherefore the third power, the executive power, by force of which the subjects of the society are compelled to accept the laws and to conform with the laws. In this we have the elements of a society in general. I was talking of principles of societies in general. Take the case of our spiritual society—our weapons, our arms to enforce the laws, are spiritual, we deprive subjects of certain spiritual benefits, we inflict upon subjects certain spiritual penalties unless they will accept the laws. That our Church is a society, perhaps, is not necessary to prove. Cardinal Tarquini, recognized as one of the greatest canonists of our time, a Professor in Collegio Romano, has written a work on this subject which he calls the Public Law and Constitution of the Church, *Juris Ecclesiastici Publici Institutiones*. Here he defines and promulgates these principles as applied to societies in general and to the Church. I might sum up his work in these words: Every perfect society is possessed of a three-fold power, legislative, judicial and executive; the Catholic Church, or the Church of Christ, is a perfect society, therefore the Catholic Church, or the Church of Christ, is possessed of the three-fold power, legislative, judiciary and executive. In the first section of this work Cardinal Tarquini—let me say I love the memory of that man; I never hear his name without pleasure; his name has been respected everywhere by all his pupils and by all the leading minds in Europe—well, this great man defends these principles. He was the regularly appointed Professor of the Principles of Church Law in Collegio Romano, one of the four great colleges of Rome; he was selected from the Society

of Jesus to fill that office. Besides filling that office he was selected by the authorities of the Church in Rome as quite competent to act in the capacity of what is called a Consultor for many of the ecclesiastical bureaus in Rome, and finally was crowned with the highest honors conferred upon our greatest authors, when he was made Cardinal. Well, I am going into many details, I will conclude this: Cardinal Tarquini is trustworthy and ought to be accepted as evidence in any Court.

Q. Speaking of the organization of the Church, will you state whether there exists complete and perfect tribunals for the redress of grievances or alleged grievances of laymen, clerics and all up to the highest authorities of the Church; just state that for the Court?

A. There do exist complete, and, as far as human infirmity will permit, perfect courts or tribunals in the Catholic Church for the purpose of redressing every grievance of which any subject in the Church may reasonably complain.

Q. Does that presuppose, or is it limited in any way to the case where sentence is imposed? Can a person appeal from any action on the part of the Bishop?

A. If you please I will explain. I say the tribunals are complete, they are perfect. There are regularly admitted advocates for the tribunals who are required to take a course of law, and not only civil law, but ecclesiastical law. For a given period of time they must devote themselves to this study, otherwise they will not be permitted to practice in those Courts. The Judges in those Courts are selected with the interests of the Society in view—the interests of the Society, whose duty it is to deal with some of the gravest questions in this world. Those Judges are second to none, anywhere. Those Courts convene regularly; they convene their witnesses and they make a full examination. One of the reasons why Rome is called the Eternal City, at least among the humorists of modern times, is found in the fact that they take ample time to investigate every case that is brought into Court. They give a full hearing to everyone that lawfully applies for a trial.

These Courts are Superior and Inferior. We have the Court of the Bishop, the Court of the Archbishop, and of Rome. We say from the General Council, or from the Supreme Judge, in the person of the Bishop of Rome, there is no appeal. We claim this, there is no appeal from the Supreme Court in our Church, and the Supreme Court is Rome.

Of course there are different Courts in Rome for different causes, here we put it under the heading—Rome. Every case in law, according to its nature, will be referred to its proper Court.

Q: What special Court takes charge or cognizance of Church cases arising in the United States?

A. The Court that is known as "The Bureau of the Propagation of the Faith." The technical term is "The Congregation of the *Propaganda Fide*," or we would say, it is the Congregation of the Propagation of the Faith. It is known as such owing to the fact that it takes cognizance of causes chiefly in what is known as missionary countries.

Q. The United States being regarded as a missionary country, I presume. A. Yes, sir; the United States, Canada, etc.

Q. Who is the Judge or Prefect of that at the present time?

A. It is Cardinal John Simeoni.

Q. Who was his immediate predecessor?

A. His immediate predecessor was Cardinal Franchi, and Cardinal Franchi's predecessor was Cardinal Barnabo. The present Prefect of the Congregation of Propagation of the Holy Faith is Cardinal Simeoni.

Q. From your residence in the city of Rome had you a personal knowledge of those gentlemen holding that office.

A. While in Rome I was a student; I went there for the purposes peculiar to a student, and my residence in that capacity would not necessarily bring me any personal knowledge of those gentlemen. However, through friends, I enjoyed the privilege of being presented both to Cardinal Barnabo and Monsigneur Simeoni, now Cardinal Simeoni, who, under Cardinal Barnabo, was Secretary of the Propaganda.

Q. Do you know Cardinal Simeoni's handwriting?

A. I do. I remember seeing the handwriting of Cardinal Simeoni frequently; if necessary I can give particulars.

Q. I suppose you saw the letters which were offered here this morning, merely shown to identify the signatures?

A. Well, I have said I had personal knowledge of the signature of Cardinal Simeoni; I may also say I have personal knowledge of the signature of Cardinal Franchi. I have letters from them in my possession at my home in Cleveland. I didn't bring them with me because I didn't know matters of this kind would come up for ex-

amination. But I may state that I have letters at Cleveland which were written to me both by Cardinal Simeoni and Cardinal Franchi.

Q. Are you prepared to say whether or not these signatures are in their handwriting? (Here letters were presented.)

A. This is Cardinal Alexander Franchi's signature, signed to the document which I find bears date 1878, the 31st day of January, at Rome, in the buildings of the Congregation of the Propaganda of Faith. This I recognize as Cardinal Franchi's signature, (the witness here designating the letters,) and this I recognize as Cardinal Simeoni's signature, John Cardinal Simeoni, Prefect; this last bears date 1878, the 2d day of May. Only the signatures are the autographs of the Cardinals; the writing in the body of the letters was not done by the Cardinals, but by an amanuensis; the signatures are in the handwriting of the Cardinals. I find moreover that the coat of arms of the Propaganda is printed in the paper, and that under it, found printed in the paper in water colors are these words: "*A Sacra Cong. de Propaganda Fide*," From the Sacred Congregation of the Propagation of the Faith; and this (referring to the other letter) contains the same marks. I consider these genuine documents.

Q. Have you translations of them, Doctor? A. Yes, sir.

You asked me whether there are in the Church tribunals or courts. I stated that there are. There are courts in Rome and likewise there is a judicial power vested in the Bishop of every diocese. From the fact that he is the Bishop he is possessed of judicial power; he is a judge, and he is the supreme judge within the limits of the diocese for all church matters. He has no co-ordinate judges, there can be no judges in his diocese, in reference to spiritual matters, except by his authority or that of his superior. His superior is found in the person of the Archbishop or the Bishop of Rome.

The Bishop as a judge has power to take cognizance of all causes that are lawfully presented to him, I say lawfully, because there are causes that he is not bound to sit in judgment upon. There are causes mentioned in the law that no court in the Church is bound to sit in judgment upon. The Bishop is not the final judge in the Church. He has a superior. The principle of the Church is this, justice shall be done to everyone, and if a subject fail to secure justice in

the diocese to which he belongs, he has a right to appeal either directly to the Pope or to the Archbishop. If any subject in the diocese feel that he is aggrieved, that justice has been denied him, or that injustice has been inflicted upon him, he has a right to appeal from the judge that inflicted what is technically called a *gravamen*, an injustice, he has a right to appeal to the Bishop's superior; such appeal is recognized in our law; there is no author who has written upon the general principles which govern the Church, who does not treat of the question of appeals, I mean any authority that has written at length on Church government. In all recognized authorities there is a chapter about appeals. First we have a chapter about judgments, and then we have a chapter about appeals from those judgments, and so on; this treatise comprises all that the Church organization requires for affording the subject a remedy for the grievance of which he reasonably complains. It is a mistake against Church law to claim that an appeal can be had only after a trial. As distinguished by canonists, an appeal is manifold. In answer to the question, what are the remedies for subjects against grievances inflicted upon them? Our authors say they are these, first, respectful remonstrance; second, an appeal; third, a complaint. By a respectful remonstrance we suppose that the subject, considering himself aggrieved, would respectfully submit to his immediate superior that he has been so aggrieved. I don't just now recollect the legal term by which this might be known under the civil law.

We say in English it is allowed to appeal from Cæsar drunk to Cæsar sober, or from Philip drunk to Philip sober, we say in Latin that it is allowed to appeal from Alexander sleeping to Alexander waking. One of our masters in law, St. Bernard, in Letter 170, writing on this subject, holds the principle that the Church never hesitates to nullify what it finds was done unjustly. The Church as an organization is, even humanly speaking, infallible, is just as infallible, philosophically speaking, as any other body of judges. We claim that her highest courts are infallible. I distinguish between human infallibility and Divine infallibility—the infallibility founded upon a human foundation and the infallibility founded upon a Divine foundation. Yet we admit the principle that it is human to err. When there is a question of human infallibility errors may be committed, and whenever there has

been a mistake an official in the Church has no right to hesitate or blush to review his course and correct it. Much better for him to correct it than to wait until he comes before his superior in the Church, THE SUPREME JUDGE, and hear his decision reversed. But aside from this instrument, this respectful remonstrance, there is an appeal. An appeal strictly so called is generally defined as removing a cause from an inferior to a superior judge, so that the injury inflicted by the sentence of the inferior may be reversed by the superior. Now, this appeal exists in the Church. It is granted by innumerable canons. It is proven by the existence of superior and inferior courts. It is defended in every standard work that has appeared upon law; let me give you some names: Schmallsgrueber gives a long treatise on appeals. Craisson also, *Manuale Totius Juris Canonici*, No. 644-670 and 5974-5995. Reiffenstuel, *Ius Canonikum Universum*, vol. 3, p. 301, etc., an eminent Church lawyer, also has a treatise on appeals; also manuals of canon law in general. There is no priest in the United States that dare deny the doctrine of appeals. There is no Bishop that dare deny the doctrine of appeals. It is universally admitted. Now the object of appeals is to remedy wrongs so that where an unjust decision has been made in an inferior court, it may be taken to a superior court for redress.

This is the general doctrine about complaints, *Quaerimonia appellatio extrajudicialis*. This mode of redress is, improperly so called an appeal from an extra judicial sentence or action of the judge, or of a bishop. This is the usual mode of redress for grievances inflicted extrajudicially. Yet the law specifies many of even these cases, from which an appeal canonical really does lie.

Q. Just illustrate what would be an extrajudicial sentence?

A. An extrajudicial sentence is a sentence that is pronounced without a trial, a conclusion—regarding the rights of the subject or the interests of the Church in the diocese—arrived at by the Bishop without formally holding court, or convening witnesses and examining them, and giving an opportunity to the accused to defend himself against the charges, allowing him the time specified in law to prepare his defense. All canonists assert this. The Council of Trent, chapter the first, in that session which is known as Sess. 14, defends this doctrine about the extrajudicial sentences by the Bishop; in fact, circumstances are such that in given cases it is impossible for Bishops

to give a trial. In certain cases the law deprives the guilty one of a trial. In certain cases there is not time for a trial. In other words, this power of inflicting an extrajudicial sentence, passing sentence upon a subject without a trial, is provided in Church law.

Q. How would it be where the accused does not demand a trial?

A. How would it be, if I am not irreverent, in the case of a man that would not come to this Court room, if the plaintiff made no application for a trial, do you think that his Honor would buttonhole him, around the corner, and say, "Come in; I want to give you a trial?" A man is entitled, by the organization of the Church, to a trial, but the Church is not bound to give everybody aggrieved a trial, unless it is asked for. When trial is asked the Courts take cognizance of the case. I have it in my power, in our Courts, to appeal against my Bishop. I have it in my power to demand a trial from my Bishop, and, outside of given cases, the Bishop is bound to give me a trial. There are cases that admit of no trial; there are cases that admit of no appeal. I want to call your attention to cases that do not admit of any appeal or of any trial. I am very sorry that you belong to a State, as a lawyer, which has a Supreme Court decision, for which there was submitted and accepted as evidence the heresy that mere priests are not entitled to appeal directly to Rome. Bouvier was referred to as an authority for this statement; vol. I, pp. 446-447; *Institutiones Theologicae*. See 90 State Rep. There is no such statement expressed by the canonist adduced. In the place referred to there is given the history of the Declaration of the Gallican clergy. There is no subject, whether man or woman, in the Catholic Church so powerless, so helpless, so degraded as to be debarred from going to the Supreme Judge in all matters which of right belong to the jurisdiction of the Church. The Council of the Vatican, which was convened in 1869, (and still continues, although not in active session,) declared that it is the right of every subject in the Church to appeal to the Pope. There is ample reason for this: Our Church would not be perfect if it were not so. There may be a misconception of the injury, or there may have been such a case as would preclude a subject from getting redress from his immediate superiors. Now what are we to do? What are you and I to do? Take the case of a priest, a priest that swears away his time, his life, his liberty under the law of the Church, and, without compen-

sation, practicing as far as circumstances will permit, every self-denial, studying in season and out of season—why, I need not appeal to the history of the Church. There are a million examples to prove that as a body priests, everywhere, are whole burnt offerings to the cause of the Church; and if, after making these sacrifices, some one could stand up and say to me, “Your Church denies you justice,” there would be an unpardonable injustice, an intolerable defect, in the organization of the Church. The Church organization is so perfect that it interferes with the rights of none. It secures the rights of all. There is an appeal, and that appeal lies from the Bishop to the Archbishop, or from the Bishop directly to the Pope, and this power of appeal is such a power that it ties the hands of the Bishop when interposed before a sentence be executed. From judicial sentences appeals should be made within thirty days. Yet a longer time, a year or two for just reasons, is granted within which to terminate the appeal from any grievance.

Q. Suppose you neglect to use the appeal, is it superceded?

A. Yes, sir; some canonists say that the time within which an appeal ought to be interposed is limited to 30 days; provided that appeal is made within 30 days the case will be heard. We will suppose this case: A priest is accused or suspected, and is in the presence of his Bishop, and his Bishop says, you are accused of this or that misdemeanor, I am going to punish you, I am going to excommunicate you. That priest has it in his power to say to him, ‘I appeal.’ If he says that instantaneously the Bishop can do nothing in cases in general. The case is taken out of the hands of the Bishop and must be submitted to the Archbishop, or, if the party aggrieved choose, go directly to the Pope or the Court appointed by him, having his sanction, and in whom he has such confidence that he can regard their conclusion as his own. If a man appeal, the case can not come back to the inferior court. The aggrieved party having once appealed would not have a right to say to the Bishop *you* must sit in judgment, *you* must pass sentence in this case. If an appeal even from an extra judicial sentence of a Bishop be taken to a superior court and the superior court sit in judgment and decide, the party complaining of the grievance can not appeal, because there is no appeal from the Supreme Court of the Church.

I am perfectly willing to take any part in this trial that may be adjudged proper; I am under no obligation whatever to take any

such part. I am under no special canonical obligation of any kind to the Bishop of this diocese, nor to the plaintiff. The only obligations I hold towards them are the general obligations that compel me to observe certain rights and pay a certain respect to those possessing certain dignities. I must say the defendant has no authority over me whatever, and before this court I assert the proposition there is not any reason why I should not give my opinion when properly asked about the law, even if that opinion is against him. I wish to add to this that this court is incompetent to adjudicate upon any strictly so-called Church matters. I assert this; I assert the proposition of the Church, and the proposition of the Church is this, that there is an appeal in our Church and there can be no appeal outside the Church for any purely Church cases. If the Honorable Judge would show, or if the complainant would show, that there is no organization in the Church to do one justice, then I grant that, in a case not strictly ecclesiastical, the civil court might possibly be expected to take cognizance of the cause. But I assert that no civil court, no judge in this country, or in any other country, has a right to repudiate the existence of that society known as the Catholic Church, or to question its laws. The Church law, the canon law has answered the question: 'Is it allowed to appeal to civil courts?' and if I am here to give Church law regarding appeals I respectfully submit that I have a right to make a statement of what the law is as to this question.

By the Court.—Our civil courts do not undertake to settle questions of ecclesiastical or canon law. We never undertake to interfere with questions of that kind, and where the fact is simply one of discipline in the case, of discipline by church authorities of one of the members, we have no jurisdiction, and do not undertake to exercise jurisdiction. It is only where the rights of property are involved and where property is at stake that the civil courts will ever interfere at all in church controversy, and it is only on that principle that the civil courts will ever take any cognizance of it. If this was simply a question of whether Bishop Tuigg had the power to discipline a priest according to the laws of the Catholic Church we would not for a moment entertain jurisdiction. But the question is here: The plaintiff claims that certain money is coming to him, and where he has a money claim that gives this court jurisdiction of the case as a question of property. Of course ecclesias-

tical law is involved in the case in this way, that he claims that he was unjustly and improperly deprived of his position, unjustly deprived of money that was coming to him from it, which he claims and he sues to recover the money coming to him, and that is the only thing that gives this court jurisdiction of the case, as to whether or not there is any money coming to him. We do not settle these questions of ecclesiastical law further than the question is involved as to whether he has forfeited his money. If he has forfeited his money then we have no jurisdiction.

By the Witness.—Suppose that the law of the church says that there is no appeal to civil courts in strictly ecclesiastical cases, and that there is within the church a remedy for every grievance, and suppose that the member of the church admits—or suppose that it be proven—that that remedy within the church has never been invoked, would the court see fit to assert their jurisdiction in the case?

By the Court.—Well, that question is too formal for me to answer categorically. All I can say is this: As they are both citizens of this State we recognize them simply as citizens, as members of our civil society, and if there is some money coming from one that is unjustly detained by the other, that gives our civil courts jurisdiction over it to entertain the complaint.

And I doubt not civil courts would enforce the payment although it might be enforced in ecclesiastical courts also, because being members of our society, we enforce civil rights and collect debts, and a member of a church can collect debts against his proper church, although there might be a remedy in the church also. It pertains to our civil courts to have jurisdiction over money matters, and that is the only possible way we ever can get involved in church troubles.

A. In property cases which are not strictly ecclesiastical, and which may be properly construed as essentially temporal, or belonging to the civil order, I do not hold that the Church repudiates the jurisdiction of the State, but this supposes that the question is one that is essentially connected with the civil order, and not connected with the spiritual order. When I declared that this court has no jurisdiction in the case now under consideration, it was in this sense that I made the statement. No one has a right to question the

jurisdiction of the State in matters that are essentially State matters, but our laws on ecclesiastical immunity must be respected.

By the Court.—Well, the two courts may have concurrent jurisdiction frequently. I doubt not, that if there was any money coming to the plaintiff here, there is an ecclesiastical way to discipline and call the Bishop to account; no doubt about that. Still, admitting that there was, if he has a clear claim for money due from the Bishop, our civil courts also would take cognizance of the fact, and it is necessary, for the Bishop frequently has to resort to our courts himself. It is often done, and very properly and very wisely done, to enforce rights in reference to property or money, and the mere fact that he may have a remedy in the ecclesiastical courts, that fact alone, does not oust our jurisdiction. The real question here is, is there anything coming to him? Has he a legal claim? Not a mere moral claim, a legal claim for money; and if he is not entitled legally to the money, why, of course, he has no standing in our civil courts.

A. The question here is, did the laws of the Church entitle Father Sheehan to an appointment. [Here the court, while assenting to receiving evidence as to church law, objected to receiving opinions of the witness as to the jurisdiction of the civil court.] I am here to bear witness to what the law of the Church is.

By Defendant's Counsel.—Q. Now, Doctor, having stated the elementary principles so that we understand the matter in general of the power of the Church, we wish to come to a hypothetical case. What would be your opinion from your study and research of the canon law, of the duty of a Bishop towards a priest who had been absent from the diocese for several years and who had presented no testimonials or credentials of his life or conduct while absent, to the newly consecrated Bishop succeeding in the diocese, leave of absence having been granted several years before the accession of the new Bishop to the Episcopacy. Could you state under those circumstances what the duty of the Bishop would be in the premises and the obligations of the Bishop generally?

A. The obligation of the Bishop in that case is determined by the rights of the applicant. No one has a right to apply to the Bishop for a position in the diocese, unless it appear that he is a subject of that diocese. Unless it appear that he is possessed of what we call "the Title of a Mission." Now I would like to say a

word about the title of a mission. It is a strange phraseology. It arises, perhaps, in part, from chapter the second, of session 21 of the Council of Trent, which says those are to be repelled from holy orders who have not the means whereby to live. Furthermore this Council says: "the Holy Council enacts that for the future no secular cleric"—I may say that secular is used here to distinguish from regular—that is, one that belongs to a religious order, one that lives under a special rule of some approved order—"although otherwise fit as to morals, science and age, shall be promoted to holy orders, unless, previously, it shall legally appear that he peaceably possesses a Church benefice which is sufficient for a becoming support." Now, in the early history of our Church it was customary to place the Churches under what is called the spiritual tutelage or patronage of Almighty God, under the invocation of a special truth or mystery, or under the special patronage of some Saint, of the old law, under Jewish dispensation, and, as time went on, some Saint under the new law, beginning with the Church of Christ in the year 1829. Now these Churches were placed under what was called a title; they were known under the title of a given Saint, mystery or truth of religion. In fact those Churches were simply called, the title of St. Paul, the title of St. Peter, the title of the Mystery of the Ascension, the title of the Blessed Virgin Mary under the invocation of the Immaculate Conception, or the title of some other Saint or mystery of religion. Thus titles were introduced and Churches were often spoken of as, simply, such and such a title. Now, every churchman, every ecclesiastic was expressly assigned to the service of a given title, or, a given Church, and that before his ordination, and from that Church he received a support according to the law of the gospel, that those who worked for the gospel shall live by it, the laborer is worthy of his hire, &c. For services rendered a given Church they are entitled to support. But where a title is not given to a Church benefice, or where benefices do not exist, as in this country, other means of support becoming the sacred calling of cleric should be established and were established. You will find this principle in that great author known as Reiffenstuel, in volume first, pages 447 and 448. I have not given his exact words. What I have given is the substance, and I think no one will question it.

Now this title is two-fold, it is patrimonial and ecclesiastic. The patrimonial title to support is that which arises from the pos-

session of property or revenue which, in the judgment of the Bishop of the diocese, is sufficient for the becoming support of the cleric. In other words, when a given person, in the judgment of the Bishop, is found to possess sufficient property in his own right to support him becomingly, he may be ordained to what is called the title of patrimony. In that case he is to look to his patrimony for support. An ecclesiastical title is manifold, although strictly speaking there are only those titles which are known as the title of Benefice and the title of Poverty, yet in a larger sense it is manifold, and under it are comprised the titles of Benefice, of Poverty, of Mission, of Common Table, etc. Now the title of Benefice is found only in those in which Benefices have been canonically erected, but there is no canonically erected Church Benefice in the United States. It has been claimed that there was a canonically constituted parish in the city of St. Louis, however I doubt that. I know that Konings stated in one of the editions of his *Moral Theology* that that parish was abolished. However, regularly constituted canonical parishes do not exist in this country. The title of Poverty is another which affords a becoming support to the ecclesiastic, and it is founded in the religious professions in which members make solemn vows as regards poverty, obedience and chastity. Now we have a law regarding this title of Mission for this country. We have seen that no person shall be ordained without a title. In the law that came to us in 1871 we find formulated the general principles of theology, of canon law, regarding this matter of title to a mission. This instruction came to us from the Propaganda and bears date April 27, 1871, and the instruction reads, I say here that the original is found in the Latin language in Konings, in that part of his *Theology* which treats of Holy Orders; on page 213 and following pages, we read as follows, (I translate from the original Latin, and I think the translation is correct.): "This title, which it has been the custom to use for those who devote themselves to the service of missions apostolic, (or those missions which depend upon the Apostolic See), in those places in which the common law of the church about title required for orders cannot be fully observed. Those who are ordained with this title draw their support from the Apostolic Ministry in the mission to which they were attached." Now a special Indult furthermore says: "That the bishop is to confer this title

only upon those who in their character and docility of soul, rectitude of intention, degree of talent, progress in the sacred studies, integrity of morals and contempt of worldly things, give reason to hope that they will be zealous preachers of the gospel." Konings adds: "This title, like others, can be lost according to the canonical regulations, and can be revoked by the bishop with, however, the consent of the Sacred Congregation of the Propaganda, to whom it belongs to release from the oath those who are so ordained." On this subject the Sacred Congregation continues: "But if the title of the mission be lost, and another title be not obtained the priest is not thereby suspended, but the bishops are bound to compel those ordained thus to obtain another title as provided by the sacred canon." This the Sacred Congregation declared September 1st, 1856. The Congregation further says: "Those who have been promoted to ecclesiastical orders, with the title of a given mission, without doubt lose their title when they give up the office of a missionary, and must provide themselves with another title. But if they are deputed to the service of another mission a new concession of the Holy See is required to accept the title of this other new mission, and the faculty of the bishop of the diocese to ordain clerics under this title is not sufficient therefor." That contains the principles regarding the laws on a title of a mission. I ask to call the special attention of the court to these words: "Those who have been promoted to ecclesiastical orders with the title of a given mission without doubt lose their title when they give up the office of a missionary." Now, let me add, the Latin phraseology is such that more likely it would be translated this way: "Without doubt lose their title *when* they give up the office of a missionary." It says, "Ubi." I have said "Where." Either translation is correct according to the original. At all events the object of the legislator here was to point out that the title may be lost, viz.: when the office of missionary is given up another title must be provided. In my opinion the law says that when the priest abandons the discharge of the duties that are incumbent upon a pastor or a *quasi* pastor he loses what is called "the title of mission."

Q. The question was asked you, in reference to which of course you explained very properly, the duty, under certain stated circumstances narrated here, of the Bishop towards the applicant for a mission?

A. A part of my answer you have heard. The obligations of Bishops are regulated by and founded upon the rights of the priest in the case. If the priest gives up the title of a mission, or gives up the office of a missionary, the diocese owes him nothing; while of his own choice he fails to discharge the duties of a missionary, the diocese owes him nothing; from the time at which he abandons the performance of his duties as a priest of the diocese, he is not entitled to the ordinary salary of a pastor, which is own to the priest in justice, by virtue of the *quasi* contract which was made between the pastor and flock. I don't say that the diocese may not be bound to furnish certain disabled, worthy priests with a becoming support. In fact, the Council of Baltimore requested, or expressed an urgent desire that priests who without any fault of their own have given up the mission, and have become incapable of a discharge of the duties connected with an active ministry, shall be provided for. The Bishops assembled in the Plenary Council in Baltimore in 1866, expressed, p. 66, No. 90, a most anxious desire that some such provision should be made for deserving priests not however as the discharge of a debt of justice that the Bishop personally owes such priests.

Q. In other words, there is no contract there?

A. There is no contract between the diocese and a priest that is considered a "*uni-lateral*" or a one-sided and a gratuitous contract. There is what we call in law a *bi-lateral*, onerous contract. There is a contract that takes and gives. There is a contract that demands the continuous possession of certain, specified, mental and moral qualifications and the discharge of certain duties from the subject of the diocese, and likewise guarantees support for the subject. I admit that when a priest is ordained, when he pledges himself to forever have the required qualifications and to serve a diocese, the diocese, in consideration of such pledge, agrees to give that priest the support that becomes his high calling, the most sacred of all callings, and I believe that a priest must support and respect his body, the temple of the Holy Ghost, destined, according to our doctrine, to be the eternal associate of the soul. We believe with the apostles' creed in the resurrection of the body and life everlasting. I believe that a priest who has been annointed and decorated with this dignity called sacerdotal—a power sufficient to supply all the spiritual wants of the human race—has quite apart from the

natural law of preservation, a right, and he has a duty to support and respect his body. If that respect is to be shown in the form of suits of good, clean clothes, outward cleanliness of which St. Paul speaks, or if it is to take on the appearance of a gentleman, he is entitled to be enabled to do that. He is bound to do that. If there be a question of provision for his bed and board, he is entitled to sufficient means therefor. If there be question of food for the mind, he is entitled to means to buy his books—his tools—a respectable library, comprising all those contributions to literature and sacred science which may be required to properly fit him to efficiently discharge the duties of his high calling. But I hold that the contract is *bi-lateral*; that the obligation of the diocese is to support a priest and place him in honor before God and man. But the duty of a diocese to secure the usual salary offered to a priest depends absolutely upon the worthiness, the qualifications of a priest. Those qualifications, the law says, are three fold, qualifications as to age, knowledge and virtue. Moreover the Bishop is required to examine whether the candidates for orders have the canonical age, viz, twenty-four years; also whether they possess the required knowledge and science. It is required, generally, that they go through a regular course, not only a college course, in which they spend from five to ten years, but, after that, a seminary course is required to fit the mind and soul for the discharge of all the highest duties that concern the human race. The Bishop may know whether these qualifications be had by his personal acquaintance with the applicants or by the knowledge obtained from the reports of examinations in the college or seminary or by an examination on given questions, in writing. Besides that the Bishop is bound to require that a priest shall continue his studies. He may have the required science for a year and, after that, gradually lose it. The Bishop may punish him if he find that he is negligent and pursue not his studies. Furthermore no priest has a right to tender his services to the Bishop unless he can stand before high heaven and challenge the world to convict him of crime, unless he can stand by his record and the laws of the Church, and say I am possessed of purity of morals, unless he positively furnish evidence that he is free from vice and possessed of virtue the Bishop must say to him, "I have nothing for you to do," "I will have nothing to do with you." If the Bishop would forget himself and take a man that is not pos-

sessed of the requisite qualifications and appoint him to a charge, the Bishop would deserve to be punished according to the canons, and even might be stripped of his mitre and relegated to disgrace and oblivion. Appointing priests bereft of the required qualifications is clearly against the law. The Bishop, by the very office he holds, says to every applicant, "Furnish me sufficient evidence of your worthiness to be placed between man and God as a fit representative of the Most High," and until that evidence has been furnished the Bishop has no authority, no power, to give any man any position in the diocese.

Q. Doctor, is this declaration sustained by the authorities?

A. Yes, sir.

Adjourned.

REV. DR. P. F. QUIGLEY resumes the stand and examination continued by Mr. McKenna.

Q. Doctor do you remember at what point you were at the adjournment?

A. My recollection is that I left off when talking of the duty of a Bishop when applied to by a priest for an appointment to a parish in the diocese. But perhaps enough has been stated on that point. What I wish to call the attention of the Court to is the fact that the Bishop is bound to provide for the proper filling of positions under him, and in consequence of this the applicant is bound to furnish sufficient evidence to prove to the Bishop that he is possessed of the qualifications required in the law for the discharge of the duties connected with such an office. It is true that in many cases no such specific, formal evidence is asked, as evidence generally is only a means to make known the facts in a case. Facts may be well known without formal evidence in some cases. I will give a case in point: If a new Bishop should come to a diocese and find in the diocese fifty or a hundred priests in charge of parishes, it is proper to consider such being in charge *prima facie* evidence in itself of the fitness of the incumbents. Being in charge of a mission is considered sufficient evidence generally of the possession of those qualifications. Also by other means there may be sufficient evidence. For instance, if the Bishop be personally acquainted with a man and know him to possess the canonical age, the required

science, and integrity of morals. Another case: A priest may come from another diocese and furnish the Bishop in charge of this diocese dimmissorial letters from the place he has been in. Those letters would be sufficient proof that the man is possessed of the required qualifications in general. Whatever be the means by which the Bishop acquires positive proof that the priest applying for an appointment is possessed of the required qualifications, the Bishop, in conscience, is bound to have such proof. That the Bishop is bound in conscience to have such proof is proved by two parts of Church law. One part is the part regarding the appointment to office or the appointment to a parish, the other part is the part containing the law on the judicial power of the Bishop, his power, his duty as a Bishop. All the authorities on Church law have a treatise about the duties, powers, and the rights of Bishops. As to the first, as we have seen, the law specifies that the applicant shall be possessed of these qualities, the first as regards his age, the second, his science, and the third his morality. I think we may for the present purposes pass over the first and second qualifications. If I were arguing this case as a Church lawyer I would waive the explanation of those two points.

By Mr. Watterson.—Why wouldn't you give an explanation of the former?

A. Because I have read the evidence produced in this case and from that evidence I think there is question chiefly of the third qualification. It is the one generally set down as the second, and we will take it in this case as the one specially to call attention to. The purity of morals, the evidence regarding one's purity of morals is generally supposed to be found in a statement of his record. I will suppose a case. I will suppose that a Bishop comes into the diocese and finds an applicant asking for a parish. He finds that applicant was not holding office for some time in the diocese, and that fact is *prima facie* evidence against the applicant.

By Mr. McKenna.—Now, Doctor, you have the authority on that and the general practice of the Church?

A. Yes, sir. First, there is an axiom in law which says whatever is done is well done, and authority must be supported until the evidence shows that authority has erred. Now if a Bishop find a man removed from office under his predecessor, he must hold that that removal was validly made and for sufficient cause, unless there

be adduced proof to show that his predecessor erred. I suppose a case in which there was no positive removal, but a case in which the applicant has simply been without a position. The law is this: The day the cleric assumes the responsibility of devoting himself to the service of a mission he takes an oath confirming a solemn promise that he will serve the mission, that he will labor in the diocese. The old law for this is found under the head *Residence*. Now if a new Bishop in the diocese find that an applicant for a position was not complying with the obligation accepted in receiving holy orders, the Bishop has a right to expect such applicant to show that he was lawfully exempt from such compliance, or, if ousted from his position in the diocese, the Bishop is not bound to reinstate him unless it be shown that his removal was unlawful. In the old law priests were attached to and were possessed of what are called benefices. Possession of a benefice may be destroyed or lost. It may be lost by removing one from the possession of a benefice. It may be lost by one resigning a benefice. The law says that if without any reclamation one abandon his benefice for the space of three years he loses his benefice by tacit resignation. I will give you a reference to this law. It is found in the author known as Reiffenstuel, vol. 1st, page 397. The language, or the substance of the language is, whenever for three years without any reclamation a beneficiary permits his benefice to be held by another, by the law in the case he loses his title to the benefice. There is no parochial benefice in this country. There is no canonically constituted parish in this country. You will find this in Konings' Moral Theology in what is known as the different kinds of Church goods, in the treatise *de Justitia et Jure*, p. 270, No. 629, 4°

Q. You claim, Doctor, that while a benefice does not exist here that the general principles apply?

A. I say that the principle was framed for good reason; was introduced by necessity, and, although there is no benefice here, yet this principle throws some light on this point. There is another principle about clerics of whatever grade by force of which all who hold benefices are bound to what is known as Residence. This obligation is imposed in the Council of Trent, (Sess. 6, de Reform, C., 2,) and is found in every manual of theology and canon law, (see Craisson, vol. 2, No. 1447,) no one will question it. Every cleric is bound to residence. It is true that for sufficient reasons one

may obtain leave of absence by force of which he is absolved for a time from the obligation of residence. (Craisson, 1453.)

Q. That is to reside in the parish ?

A. That is to such residence as is required for the proper discharge of the duties that are incumbent upon the beneficiary. But a leave of absence may be granted for a year. At the end of a year the beneficiary must return or apply for a continuance of the leave of absence. Absence is usually granted for two months, but there are causes that provide for a longer absence. (See Craisson, vol. 2, No. 1454 and 1455).

Q. Then there is no such thing as an indefinite leave of absence known in Church laws ?

A. No, sir; every leave of absence must be granted in writing, even absence for two months; so Craisson teaches, No. 1459.

Q. Now, Doctor, if you prefer it, I will propound some questions here which Mr. Reardon and myself have prepared, with the aid of Mr. Barton, which will probably get at the points that we desire specially to raise here as speedily as in any other way.

Doctor, state if there are cases in the Church laws from which no appeal lies, and if so, please enumerate them ?

A. There are cases in Church law from which no appeal lies, and their number, if I remember aright, is fifteen. That there are cases from which no appeal lies is found in the universally admitted canon which is in the original. First, your Honor, the canon is introduced under the Chapter of Appeals, and says: "Appeals exist for all causes, excepting those cases in which the law prohibits appeal." Wherefore, cases in which an appeal is not admitted, are points of law, questions of fact, and, on the general principle that what is odious must be restricted—an axiom in our law—we are not to deprive any subject of remedy for a real or supposed grievance unless we can prove that positive law debars from a remedy.

Q. Doctor enumerate the cases in which the law forbids an appeal ?

An appeal is prohibited by: 1. Crime; 2. Excellence; 3. Agreement; 4. Arbitration; 5. Death; 6. No delay; 7. Appeal rejected; 8. When the affair is notorious; 9. Correct; 10. Contempt; 11. Possession; 12. A clear law; 13. Executing a judgment rendered according to law; 14. Trivial affairs; 15. Affairs

very long continued. I would like to offer a few words explanatory regarding these fifteen cases.

Q. First, Doctor, you have read the evidence in this case. Could you state from the way the issue was framed whether or not an appeal would lie in this case, whether it comes within the fifteen cases?

A. No, sir. The case, as I understand it from the evidence, deposed in favor of the plaintiff, is not debarred an appeal.

Q. An appeal will lie?

A. An appeal lies in the case now in this Court, as I understand it from the evidence submitted.

Q. Is it included in, or identified with any of these exceptions?

A. The case, according to the evidence given, is not included in any one of those cases exempted by the Church law. I will submit the authority and explain all the cases given. The first is, crime. This, according to the authorities, is a criminal case, criminally proved; in other words when the criminal is convicted and confesses his crime.

Q. That means in a Criminal Court, or a Civil Court?

A. It means, strictly speaking, in any Church court, I think.

Q. Would that apply to a case here where a cleric was convicted of murder and sentenced to the penitentiary?

A. By an interchange of court justice I suppose such a case is debarred an appeal.

Q. The conviction of any criminal offence?

A. Yes, sir; the conviction of any criminal offence.

Second, excellence debars from appeal. That is, the excellence of the supreme judge, the Pope, the General Council; because our doctrine is there can be no appeal from the supreme court and the supreme court in the Church is the General Council; the supreme judge is the Bishop of Rome. From the decision of the Pope or General Council no appeal lies.

Third, agreement precludes, deprives of, the right to appeal. Accepting a judgment rendered, or expressly or tacitly foregoing an appeal: expressly, engaging to abide by the sentence of the judge, and not appeal; tacitly, doing an action opposed to appeal, or approving of the judgment rendered.

Fourth, arbitration denies one the right to appeal. In this case the interested parties are bound to stand by the award of the

arbitrators unless such judgment contain manifest iniquity. The reason of this exception is arbitration must be imputed to one's own voluntary agreement and compromise.

Fifth, I have stated "death." The original word is *fatalia*. The more correct expression is, the expiration of the time within which, by the law, an appeal must be made. It is from *fato*, the old pagan word used to designate death, and here we understand by it those periods of time within which an appeal must be made, and beyond which the appeal is void and the judgment rendered must stand.

Sixth, no delay. When the affair admits of no delay it is not permitted to appeal; at least it is not permitted to appeal against the effect of the judgment rendered. For instance, it is not permitted to appeal against the opening of a will when the judgment requires that the will be opened. One is not permitted to appeal against the harvesting of a crop.

Seventh. "Appeal rejected;" debars from the right of appeal, when the case with this clause inserted, has been delegated by the superior, for instance by the Pope, and, contrary to the common law, with the expressed declaration that there shall be no appeal.

Eighth. When the affair is notorious. Let me say here, that in our theology and law we distinguish a twofold notoriety, the notoriety of fact and the notoriety of law. I suppose this, possibly, agrees with the civil law. An appeal is calculated to protect the innocent and to afford redress against grievance, but it is not calculated to defend the guilty. When the guilt is notorious, even by notoriety of fact, an appeal would impede the execution of a just sentence and postpone the trial, which should be instantaneous.

Ninth. The word "correct." This means that an appeal from a lawful correction is not admissable.

Tenth. Contemptuous contumacy debars from the right of appeal. By this they mean contumacy in not appearing at the citation of the judge. This deprives one of the right of appeal from the sentence pronounced.

Eleventh. Possession deprives one of the right to appeal, that is a judgment pronounced in relation to possession deprives from appeal as to possession; but one may appeal as to the right of possession. Take, for illustration, the case of possessing a parish.

Twelfth. A clear law deprives one of the right of appeal. That is, when it is evident that the judgment was rendered according to law, because the appeal exists for the purpose of removing injuries which are forbidden by law.

Thirteenth. Executing, according to law, a judgment rendered, does not admit of an appeal so long as the manner of executing the judgment does not exceed the legal manner of executing the judgment by falsely interpreting the judgment.

Fourteenth. Trivial affairs do not permit of an appeal, small sums of money, for instance, the sum of five ducats, five or ten dollars; yet canon law may admit of appeal in affairs however trivial, not as to the quantity of the injustice inflicted, but because of the injustice of the sentence.

Fifteenth. An affair very long continued does admit of an appeal. This is fully explained in our great author Reiffenstuel, in volume third, beginning on page 348. These are all the cases which, according to the canon law, are debarred from appeal.

Q. Now, Doctor, you have explained and said this case was not within those exceptions. Now I will ask you this question. Is any priest complaining of any grievance in the United States entitled to a canonical trial?

A. I distinguish, every priest in the United States complaining of a grievance not included within the fifteen cases given, or the *ex informata conscientia* cases, according to chapter the first, session the 14th, *de Reformatione* of the Council of Trent, is entitled to a trial. Any priest complaining of a grievance included among the the cases given, is not entitled to the benefit of an appeal or of a trial. I would like to answer this question a little further.

Q. I was just going to ask you what the law was in the United States regarding these trials?

A. There is only one special law in the United States regarding a trial. These are the general laws of the Church regarding a trial. I speak here of a trial strictly so-called. The general laws of the Church oblige everywhere and confer rights on all subjects of the Church, and demand the discharge of duties from all subjects of the Church. As to those general laws there can be, reasonably speaking, no dispute, because if the Bishop would violate those general laws, he would expose himself to be degraded or he would be forced to another alternative quite as disgraceful, he would

be obliged to sacrifice his character before the public as a man fit to discharge his duty as a Bishop, and what is still higher he would fail before Heaven to discharge his great duty, to render justice to everybody that is subject to him. But the special law in the United States is found in the Plenary Council of Baltimore in No. 77. That special law has been referred to here in my presence.

I do not say the reference made betrays malice on the part of those who made it. But I do say it establishes beyond question that those who cited that law are mistaken as to its nature. A translation of the law was submitted here in evidence. The translation is unqualifiedly false. I do not blame those who offered it. Perhaps they prepared that part of their argument in a moment of haste, and finding the work, as they thought, already done, in a book called "Notes on the Second Plenary Council of Baltimore," by the Rev. Doctor Smith, of New Jersey, and thinking that work was trustworthy, they simply embodied that translation as a part of the evidence submitted. First. The book cannot be admitted anywhere as evidence in anything regarding the law of the Church because we must hold, as prohibited by law, supported by various decisions made during centuries gone by, as well as a most recent decision, any book treating of faith or of morals, or any of these questions we are now in, and published without the *imprimatur*—the written approbation of the Bishop of the diocese in which it is published. I say any book so published is forbidden by law. The "Notes on the Second Plenary Council of Baltimore" were so published; hence it is forbidden and cannot be admitted here as authority.

Q. You say that it is not an authority?

A. It is not a trustworthy authority. I have asserted they took the translation from that book. But whatever may be said about those "Notes" here in this Court, the translation given is false. My proof is this, that the law refers to a given class of cases, and in the translation submitted it was pretended that the law covered all offences, reaches every grievance, while in fact that law distinctly states that it is only in "criminal cases" that this trial is provided for. Let me give you a little history of that. In the Council of Trent, three centuries ago, it was provided in the interests of justice there should be a provision for trial where it was lawfully demanded. In St. Louis in the Provincial Council, I think in the

year 1855, the bishops of that province recommended, as entirely expedient, the introduction of some such provision in their local statutes. In the year 1866, that law provided for in the Council of Trent, was reproduced here as something entirely expedient, and was elevated, if I may so speak, by the Bishops of the Council of Baltimore into a part of the common law of the United States, "which the fathers of this plenary council enact as a part of the common law." In that law it is specifically stated that trial is to be granted to priests "in criminal cases;" that supposes that there is something very grave charged against the conduct of the priest; that a very grave penalty is about to be inflicted. The trial thus provided for is to be conducted by a court comprising the bishop of the Diocese, or his Vicar General and associated judges. The Bishop of the Diocese, according to that law, is supposed to be empowered to pronounce a sentence. The associate judges are likewise empowered to pronounce a sentence. Now if the associate judges dissent in their opinion from the opinion of the Bishop, he cannot enforce his opinion; but an appeal must be had to the Archbishop of the Diocese. This is our special law, providing for a trial in criminal cases.

Q. In criminal cases?

A. This law reaches only criminal cases.

Q. Now, Doctor, in reference to this book, I believe that that translation of these "Notes of the Second Plenary Council of Baltimore" has been corrected in a subsequent edition?

A. No, sir; I am not aware that any second edition of the work was ever published. The book of which I spoke and the book I understand you are questioning about, is a book entitled "Notes on the Second Plenary Council of Baltimore."

Q. It is a different book from Dr. Smith's Elements of Ecclesiastical Law? A. Quite different.

Q. The correct translation, I believe, appears in Dr. Smith's Elements of Canon Law in a later edition, does it not?

A. I don't know that in the Elements of Ecclesiastical Law, Dr. Smith gives the translation of that passage of the Council of Baltimore.

Q. Is it simply an omission in translation?

A. I do not know; but I do know this, that Dr. Smith treats of the question of criminal causes to some extent, and, at least incident

ly, treats of the question of a trial, and in the last edition of his *Elements of Ecclesiastical Law* there is nothing that defends or supports that false translation of the Baltimore decree, No. 77; and I think, too, that Dr. Smith has openly stated that in treating of this matter he intended to refer only to the removal of a priest who is guilty of a crime.

By the Court.—If you will pardon me I would like to know what you mean by a crime in the ecclesiastical law, a criminal offence; what do you understand by that?

A. Well, the word crime in our law means the same as it does in the civil or in the criminal law in its original signification. Our modern courts have borrowed their legislation from our Church courts in matters of that kind in general. A criminal cause is a cause in which there is question of a crime committed by a clergyman and for which crime he is about to be punished by grave censure. Furthermore, that crime is not secret but public. By public we generally mean that the knowledge of this crime is had by at least about fifteen persons.

By the Court.—Would leaving his parish and absenting himself without leave be considered in your common law a crime?

A. Certainly.

Q. Would intemperance be a crime?

A. That depends upon what you mean by intemperance.

Q. I mean the intemperate use of ardent spirits?

A. The inordinate use of ardent spirits certainly constitutes a crime whenever such use unfits one for the discharge of his duties or causes grave scandal to the public.

Q. Would any immorality be considered a crime, gross immorality?

A. Every gross immorality is considered a crime; in a word, any actions against the canons of the Church regarding the integrity of morals constitute a crime.

Q. In the sense of the common law?

A. Yes, sir; regarding the trial in this case I have said that the only special law that provides for a trial, is that law of the Second Plenary Council of Baltimore. It has been claimed that a trial is provided for in the *Instructio* that came from Rome July 20, 1878. It has been claimed that no one accused of any misdemeanor whatever or in any manner objected to on the part of the

Bishop, could be removed from his charge or changed from one parish to another, unless the trial provided for in that *Instruction* were actually had. It has been claimed that that instruction constituted the priests in the United States immovable pastors, pastors that could not be changed excepting after a regular trial and excepting after a conviction of those crimes stated in the law as sufficient to remove a canonical pastor. I hold that Instruction does not contain a word that provides for a trial; that instruction does not contain a word that provides for the appointment of judges of causes; that instruction does not vest anybody with any right or any power to sit in judgment upon a priest or to pronounce sentence. The words of the Instruction are these: A commission of investigation shall be established, or in other words a committee of examiners shall be appointed by the Bishop of the diocese, and: "When there is question of the removal of a priest from his charge" the examiners shall institute an examination before such removal is made. This does not mean where there is question of changing him from one parish to another. I submit this as evidence that the Instruction provides only for an investigation under the general law, supposing that it is demanded on the part of the priest, and provides only for an investigation whenever the priest is to be *ousted from the ministry*, whenever he is to be entirely shelved.

In No. 125 of the Plenary Council of Baltimore, the Fathers say: "In using the terms, Parochial right, Parish and Pastor, we by no means intend to confer upon any pastor that right called the right of *immovability*, nor do we intend to take away, or in any manner diminish that power, which according to the discipline obtaining in these provinces the Bishop possesses, of depriving any priest of his office or transferring him elsewhere." In No. 108 the Fathers say: "We admonish all priests in these provinces * * * that mindful of the promise made at their ordination, they shall not refuse to serve any mission designated by the Bishop, if he judge that a sufficient support can be had there, and that the appointment is in keeping with the powers and health of the priest." Furthermore, I submit as evidence that certain parties in this country referred doubts to the Holy See as to whether or not the instruction of the 20th of July, 1877, in any manner voided decrees of the Council of Baltimore, No. 125 and No. 108, whether or not in any manner it interfered with the rights, which according to these decrees Bishops exercised in

this country. The answer coming from Rome was that this *Instruction* is not calculated in any manner to undo said decrees of the Council of Baltimore.

Q. Now what advantage was afforded the priest by the *Instruction* of 1878. What particular advantages?

A. One advantage is this, to supply the priest with some tangible data as to the facts, etc., in the emergency of an appeal.

Q. The report of these examiners?

A. The report of these examiners is something in shape to be presented to the Court to which an appeal is made. Let me say here, I would like to have this added to my remarks about the *Instruction*: In the investigation provided for in the *Instruction*, there is no juridical trial mentioned; no juridical power conferred; therefore to say that the members of the investigating committee are JUDGES in the case is a mistake, the law that provides for the JUDGES OF CAUSES is found in No. 77 of the Council of Baltimore. There is not a word about that juridical body in the *Instruction* referred to. The advantage afforded is this, in the words of the *Instruction*, that "The investigation shall be held unto this end, and be so conducted that with all possible diligence a correct opinion of the facts in the case may be reached," then it is provided that that opinion shall be submitted to the Bishop in writing. The *Instruction* providing for this investigation does not say that the Bishop may not disregard the opinion submitted, it does not say that he cannot insist upon an action against that opinion, but in case an appeal is to be had this opinion is to be submitted to the Archbishop and the Archbishop may side with the Bishop against the appellant, or he may agree with him. If he side with him the priest may accept that decision or he may refuse to accept it and appeal to Rome against both Bishop and Archbishop.

Q. Then the collection of this data and testimony, and the preservation of it on behalf of the priest, is an advantage that they did not enjoy before?

A. They did enjoy it before, whenever in questions of criminal causes they saw fit to demand a trial and had such trial. Another advantage of the investigation is that the priest is afforded full opportunity to make out the best case he can, and to offer the best defense possible; again the instruction precludes unwarranted action on the part of the Bishop.



Q. Doctor will you state now under what circumstances may a Bishop refuse the application of his priests for an appointment to a parish. I think you have answered it in a general way?

A. I have stated that the applicants for office must be possessed of the required qualifications, viz: of age, science, and the purity or integrity of morals.

Q. As this is a very vital question, in our view of it, I wish you would state the authors that show affirmatively that the priest must establish his qualifications to the satisfaction of the Bishop?

A. First I will give you a general answer and then a particular one. All the authorities that have treated on the laws of the Church have treated of the qualifications in general requisite for those who hold office in the Church. Now all the authors hold that these three things are requisite: the required age, sufficient science, and purity or integrity of morals. If you wish to have some special authority, I will mention Ferraris, in his *Treatise on Benefice*, under Article V., Nos. 7-12. He shows that persons to be promoted to the episcopal dignity should have completed the 30th year of their age; those who are to be appointed to parishes should be 24 years old.

Q. On these three requirements there is no dispute, but there is a dispute that it is incumbent on the applicant to prove affirmatively to his Bishop that he possesses those three qualifications:

A. First, the law establishes those as qualifications requisite. The Bishop, in his judicial power as head of the diocese, is required before entrusting a charge to the applicant to see that these requisitions of the law are complied with. There will be no dispute about that. Anybody that has treated of Church law treats of the power and the rights and duties of Bishops, and show that they are required to confer ecclesiastical appointments only upon those who, according to the canons, are worthy. Now, besides these general laws of the Church, we have special laws. In the Second Plenary Council of Baltimore, which lays down the qualifications required on the part of a pastor; the line of argument is this: first, candidates for appointments as pastors shall be free from vice; and, secondly, they shall be possessed of positive virtue. (See pp. 65-105.)

Q. What we are asking here is, on whom is the burden of proof to establish that; is it on the part of the applicant?

A. In some cases no formal proof is required, because evidence of fitness is already had. I stated that previously. That proof may be had by the Bishop's personal knowledge of the applicant, or it may be had by the authority of others. So there are cases in which the Bishop, without any specific statement and hearing from the applicant as to these qualifications, knows, otherwise, that he is justified in making the appointment, because he knows, otherwise, that the applicant possesses, positively, the required qualifications. When one is about to be ordained a priest, he must, by positive proof, satisfy the Bishop that he possesses all the required qualifications. In case the fitness of the applicant is not fully known to the Bishop, the burden of proof rests upon the applicant.

Q. Now suppose he applies, after ordination, for a mission to another Bishop, who knows nothing about his antecedents, does the Bishop presume the moral integrity of the applicant; is there a presumption of it, or has it to be established to the satisfaction of the Bishop?

A. No, sir; there is no presumption because one is a priest that he is possessed of virtue and the other required qualifications, because practical life and the history of cases in our Courts show that many priests have not the required qualifications, and because it is positively laid down that Bishops shall confer appointments only upon those whom they know be worthy.

Q. Do the laws of the Church, in the case of the refusal of an application on the part of a priest for a mission, require the Bishop refusing to furnish the applicant, either verbally or in writing, with a statement of the reasons for withholding the appointment?

A. No, sir; they do not. When an applicant goes to a Bishop to seek an appointment, he knows that the Bishop is by law prohibited to confer an office upon a man that has not proven himself worthy. He knows if the Bishop appoints a man who is not possessed of all the qualifications, such appointment, even if made, ostensibly, by the Bishop, is null and void, and may be punished by grave censures. (Craisson, No. 469, etc.) As there are appointments that are null and void, so there are applications which are null and void. The fact that a clergyman comes to a Bishop and says, "I want an appointment," does not give him a right to an appointment. If any man go to the Bishop, without the canonical qualifications and say, "I want a parish," his tendering of services

are illegal. A legal tendering of service is this : establishing the fact that one belongs to the priesthood ; establishing the fact that one actually belongs to the diocese, or if he comes to the diocese as a stranger, that he has the required authority of the Bishop to whom he last belonged to be transferred to the diocese in which he now seeks an appointment, and establishing his fitness ; giving positive proof as to his possession of the required science and morals,

Q. Proof outside of his statement ?

A. To give proof outside of his own statement where a Bishop has not sufficient reason to accept a man's statement as trustworthy. If he had heard serious charges against the applicant, or knew that he were a public drunkard, or in any way guilty of crimes against the canons of the Church, the applicant is required to furnish positive evidence that in sorrow and in prayer he has done penance and purified his soul and re-acquired the requisite virtues.

Q. Now, Doctor, state the law of the Church and the duty of the Bishop toward the applicant for a mission in case a priest, absent six years from his diocese, refuse to account to the Bishop for his life and conduct during his absence, or to furnish any testimony or credentials ?

A. The duty of the Bishop is to take cognizance only of a legal application ; the duty of the Bishop is to refuse to recognize any illegal application.

Q. Would the mere verbal application or written application of a man absent six years under these circumstances be a sufficient tender ?

A. When absent for years without any renewal of the permission of absence, without sending any reports as to his career during that time, the obligation on the part of the priest is to show why he was absent and by what authority he was absent, and also to present testimonials as to his conduct while absent.

Q. Is he pledged, Doctor, to lay his credentials or letters before the Bishop, or to furnish other satisfactory evidence that he has been absent with leave, and conducted himself professionally ?

A. Yes, sir.

Q. State the law of the Church and the canonical duty of a priest so long absent from the diocese on his returning to the mission ?

A. The duty of the priest, as I have stated, is to give sufficient proof to the Bishop that he has been legally absent, that he is now legally qualified to terminate his absence and to legally resume the discharge of priestly duties in the diocese.

Q. Now, Doctor, conceding the original leave of absence of a priest to be good, is he bound by the laws of the Church to make frequent reports to the Bishop about his whereabouts and occupation? Under the laws of the Church what is the penalty attached to the disregarding of communication with the Bishop?

A. Well, the laws of the Church compel a priest to residence in his mission, and admit of dispensation, given usually in the form of a leave of absence granted for a designated cause. In case the priest have such cause and apply for a leave of absence, as far as I recollect, the law of the Church regulates that such leave of absence shall be granted for canonical cause for three months, and, in given cases, longer. When that time will have expired the clergyman in question is not only required to report to his diocesan superior, but he is required, in case he find he cannot return, to make a new application for the extension of his leave of absence, and again this leave of absence would be granted for the time fixed by rule.

Q. Isn't he still under the ecclesiastical jurisdiction of his Bishop, even while absent?

A. I distinguish. If he have canonically lost his title to the diocese he is not under the jurisdiction of the Bishop, otherwise he is.

Q. But the question here concedes the regularity of his leave of absence. Would he still be under the jurisdiction of the Bishop? A. Yes, sir.

Q. Is he not bound to keep the Bishop informed where a letter will reach him, to enable the Bishop to communicate with him?

A. Well, I distinguish. He is bound to keep the Bishop so informed whenever there is a question of the Bishop's right to communicate with him and notify him of his presence being required in the diocese, or notify him to resume in the diocese his residence; but I do not say he is obliged to report to the Bishop, so that the Bishop will know from day to day just where a letter will reach him during that time for which he has already leave of absence. He is bound to return when the canonical leave of absence shall have expired, and therefore he is bound to all means required to that end.

Q. I ask you what is the penalty attached to the disregarding or overstaying a leave of absence for years and not communicating with the Bishop?

A. Well, in the old law where there was a question of a clergyman possessing a benefice it was stated that an uninterrupted absence from one's benefice for three years was, in itself, sufficient to deprive him of the benefice. You will find this in Riffensteuel, vol. I, page 397. This supposes that he were to continue absent for three years without any reclamation of his right to the benefice.

Q. Does that law prevail here, the principle I mean?

A. This law, it is true, was framed for countries in which canonical parishes were erected, and it related to benefices. Although we have no canonical parishes here, and although we cannot say that this law was written to regulate cases like the one you propose, yet we must admit the universal law that priests are bound to a residence. They are bound to obey the Bishop, and then are bound to return when the leave of absence granted will have expired.

Q. Well, the question has still not been answered. I asked under the laws of the Church what penalty is attached for the neglect and disregarding of a leave of absence?

A. The deprivation of benefice. I adduced in testimony here yesterday the law sent to this country in the year 1871 to show that, by rule of the Supreme Court of Rome, whenever a priest gives up the service of a missionary in this country he loses his title, he severs himself from the diocese. I suppose a case: I suppose that a man had become disreputable in a certain locality, by becoming addicted to intemperance or to anything else that he knows disqualifies him from the efficient discharge of his pastoral duties; and suppose he should say to his Bishop, "I am going away," or suppose he should say nothing, disregard the law regarding residence, go away and stay away. Well, in that case the Bishop would say, "Thank God, he has gone, and the scandal is removed." In that case the title of a mission would be lost. This is the penalty.

By the Court.—Suppose a priest, in consequence of ill health, resigns a parish and the resignation is accepted by the Bishop, does that deprive him of benefice or support from the Bishop?

A. The law regarding that is found under what is known as resignations.

By Mr. McKenna.—In what book?

A. You find it in Reiffenstuel, in vol. 1st. In all those authors—
By the Court.—If you would just please answer this question. I want you to state the law in your answer. You are here as an expert to give us the law, and you can refer to your authorities as vouchers. But where a priest in consequence of ill health resigns his parish and it is accepted by the Bishop, does that deprive him of benefice or support by the Bishop?

A. In answer I will say that authorities distinguish between different resignations. Their answer is this. If the resignation be absolute it deprives him of his right to support. If the resignation be conditional it entitles him to a support. The distinction in question is founded on this, that a resignation is either simple or conditional. When it is simple there is no reservation whatever. When it is conditional it is made with a certain condition. The condition may be made in favor of a given third person, or it may be made with the reservation of support, but whenever there is no condition in the resignation the authorities say it is simple. In my own opinion, to a priest that should come to a Bishop after a resignation and ask for support, the Bishop would have a right to say, "When you resigned your benefice, in this case, when you resigned your parish, did you specifically stipulate that the diocese should support you. Prove that your resignation was conditional." If such proof be had—if such proof can be furnished, the priest so resigned is entitled to support, although by his resignation he was deprived of the benefice.

Q. Then I understand your answer to be this: That where a priest resigns his parish because of his ill health without saying anything about pay, and that is accepted by the bishop, he is not entitled to any support from the diocese?

A. Again, your honor, I must distinguish. He is not entitled to any support on any claim of justice on the part of the diocese towards him as a pastor or *quasi* pastor. He is entitled to support on the claim of the charity that the diocese owes him, provided that he establish that he is a fit subject for charity. But unless he show that he is worthy he is not entitled to any support as a priest of the diocese. We have a special decree regarding this in the Council of Baltimore. The bishops earnestly recommend the establishment of some means by which a priest superannuated, or, from other cause not his own fault, incapable of discharging the duty of a pastor,

may find some means of support. The decree of Baltimore goes on to say that means of support may be obtained from the parish which the priest has served, or may be secured through some such organization as an infirm priest fund. In many of the old and well regulated dioceses, where the bishops have found it possible to make the regulation, they have established a certain society to becomingly support priests who, without any fault of their own, have become incapable of discharging the duties incumbent upon priests when in active service in any position in the diocese. The old law of the church required that the diocese should support the bishop and that the parish should support the pastor rendered incapable of longer service, but provided the resignation was conditional and the priest should be found worthy of the charity. But here, because of poverty in this new country, and the difficulty of obtaining church funds, we have no such regulations. In fact a requirement on the part of the bishop for some poor congregations to support a pastor rendered incapable of longer continuing in the exercise of pastoral duties would be absurd.

By the Court.—Q. In the case that I have suggested where a man in ill health and in consequence of sickness has to resign his parish, and it is accepted by the Bishop, and if his ill health continues, can he enter any worldly business under your rule of the church? A. No, sir.

Q. Then if he cannot he has no claim upon the bishop or the diocese for his support except on the footing of charity—in other words, as a ~~pauper~~?

A. Honorable Judge, I repudiate entirely the right of any man to attach anything like a tinge of reproach to that heaven born virtue of charity. There is a world wide difference between the proper conception of that divine gift of God and this cold, materialistic idea of *pauperism*.

Q. Well, if he has no just claim upon the Bishop or the parish, and that is what you said, no claim in justice, there is certainly a claim as a pauper?

A. I didn't say that he has not a just claim.

Q. No claim in justice?

A. No claim by force of justice to him as a pastor.

Q. Then it is no just claim, is not the claim itself simply on the footing of charity?

A. Why, a claim in charity may be just as well as a claim in justice.

Q. Well, if it is a claim at all is it not in justice ?

A. No, sir, because justice supposes payment to the priest of a debt by force of some contract.

By Mr. McKenna.—Now in this case state if under the laws of the Church the fact of Rev. Father Sheehan's return to Pittsburgh in the fall of 1875, before the division of the diocese and while Bishop Domenec was in office, and continuing to be unemployed and not exercising the faculties of the priesthood from October, 1875, until March the 9th, 1876, when Bishop Tuigg assumed the office, and during all said period from October, 1875, to March 19, 1876, Rev. Father Hickey and Bishop Domenec's counsel, of whom Bishop Tuigg, then a priest, was a member, had full canonical power to reinstate or appoint into a mission, and he made no application to either source for restoration to office, was Bishop Tuigg, with full knowledge of the above facts, proceeding according to the canons of the Church in refusing plaintiff any appointment until he, by other proof than his own word, established the fact that he was possessed of the proper moral qualification ?

A. The Bishop was so justified.

Q. Sir ?

A. The Bishop was justified without the proof in question.

Q. In the canon law does any presumption lie in favor of a priest once qualified by the requisite purity of morals so as to relieve him from affirmatively establishing the same to the satisfaction of his superior when he subsequently applies for an office; how is the retention of the standard of morality of an applicant for the ministry to be proved by the canon law ?

A. No, sir, there is no law to entitle any one to exemption from submitting the proof regarding his qualifications.

Q. What is the tribunal and how is the retention of the standard of morality of an applicant to a mission to be proved under the canon law, before what tribunal, who determines it ?

A. By law the Bishop of the diocese, in the first instance, is to take cognizance of all ecclesiastical causes. The Bishop is the proper judge.

Q. Then it is his duty to pass upon the qualification of an applicant for a mission and to decide subject to the right of appeal ?

A. Yes, sir. Excepting in the cases already adduced as cases in which no appeal lie.

Q. May the Bishop, who is in entire ignorance of an applicant's antecedents or of one who has been a long time absent from the diocese, require proof of the continuance of the requisite standard of morals.

A. He may require such proof and by the canons of the Church it is his duty to require such proof.

Q. Is a priest required, where the Bishop has doubts of his entire reform or ability to overcome the vice of drunkenness, to obey the admonition of spending a reasonable time on probation, to convince the Bishop that he may be trusted with the care of a mission?

A. He is so bound to give his Bishop evidence of reform.

Q. By going on probation?

A. Yes, sir; where probation is justly required.

Q. In such case what right to a salary under the laws of the Church or of support would a priest have on the refusing to comply with such a requirement of his Bishop?

A. No right whatever in justice to the diocese, because at his ordination he entered into a contract, which is not a gratuitous one on the part of the diocese. It is a bi-lateral contract. It is an onerous contract requiring the discharge of duties on the part of both; if either of the parties to the contract fail, for instance if the priest fail to discharge his duty and to keep himself perpetually qualified, he loses all right arising from the contract now in question. The Bishop may suspend him even if he be in charge; and when without a charge, the Bishop must refuse to give him an appointment. The rights of the priest to support depends unqualifiedly upon his fitness and upon his actually furnishing proof that he has complied with his part of the contract. If he fail in that the contract is suspended or dissolved.

Q. Well, now, as a matter of practice, is such a course of action on the part of the Bishop, the usual requirement, and would such spiritual retreat or probation be detrimental to the health of a priest sufficiently restored to health to apply for a mission?

A. Such requirement on the part of the Bishop is a necessary course for the Bishop, whenever he has not been furnished with the evidence in question. The required probation may be a little hard on some people and may be against one's natural inclinations, one's

unjustifiable and unlawful propensities, yet one is bound to secure the object and make use of all the means required to qualify himself. Should he fail to do so he foregoes all right to an appointment.

Q. Doctor, as a general question, would a spiritual retreat, the retirement to a monastery be any more detrimental to a man's health than taking charge of a mission?

A. No, sir; I think any one well enough to serve a parish is able to make a spiritual retreat.

Q. I presume you have read Father Sheehan's testimony in this case? A. Yes, sir,

Q. State if, according to his own testimony in this case, he has invoked any of the existing remedies against the grievance complained of?

A. The testimony, as I recollect it, given under oath by the plaintiff, shows that no such remedy was invoked. No trial was asked from the immediate superior or from the Bishop's superior, and no appeal was made to any superior court.

Q. You stated yesterday that ample redress was afforded in the Church courts?

A. Yes, sir; there is ample redress IN the Church under the law.

Q. Are the tribunals of the Church competent to afford pecuniary relief as well as determine the question of rights involved, and grievances imposed?

A. They are competent to award ample reparation for *all* injuries sustained.

Q. Take this case. I suppose that Father Sheehan, the complainant here, could carry his appeal to Rome, waiving the question of jurisdiction of this court, for his claim of three years' support, and an issue was made up in the Roman Courts before the Holy See, and it was there thought that Bishop Tuigg had made a mistake and was altogether wrong in this matter, would that Court have authority to grant Father Sheehan indemnification for the three years' salary? A. Yes, sir.

Q. They take jurisdiction and cognizance of the whole subject matter? A. Yes, sir.

Q. As I understand you, the ecclesiastical courts deal in matters of property, pecuniary matters as well as matters of religion and justice.

A. Why, certainly. The whole history of legislation upon benefices proves that.

By the Court.—Then you say you have read the plaintiff's testimony in this case and that he has not taken the proper course he should have done under the laws of the Church to redress his alleged grievance. What course should he have taken?

A. Yes, your Honor, the plaintiff should have settled his supposed grievance in the Church; he should have appealed.

Q. To whom? A. To the Archbishop or directly to Rome.

Q. Has the Bishop of Pittsburgh power under the laws of the Catholic Church to refuse a priest of the Pittsburgh diocese, when he requests it, an appointment to some work and refuse to allow him any support, on reports derogatory to his moral character without citing him to a trial and without giving him an opportunity of defense.

A. He has; provided those reports the law states are sufficient to justify the Bishop in conscience.

Q. Then how long can he continue such refusal without giving a trial?

A. Until trial is asked for, or until receiving from his superior a requisition to the contrary.

Q. If a priest's health is such as to unfit him for the performance of the priestly duties of the parish can the Bishop refuse to allow him any support. I think you answered that substantially in the affirmative before. A. Yes, sir.

Q. Your answer would be, he can?

A. Yes, sir; he can refuse such priest the salary of a pastor, yet in charity he should provide for becoming support for all who, without any fault of their own, are incapable of work.

Q. If a priest be absent from the diocese for several years with the consent of the Bishop of the diocese, and comes back, is he, or is he not to be recognized as a priest of the diocese?

A. He is to be recognized as a priest of the diocese in the sense that he is bound to obey the Bishop, and prove that he is fitted, morally and intellectually, to take charge of an appointment.

Q. The broad question was would he still be recognized as a priest of the diocese, but his standing as a priest is another question. If on his return there are reports derogatory to his character, can a Bishop, without citing him to trial and giving him an opportunity of defense, indefinitely suspend him from priestly functions and refuse to give him any allowance for support?

A. He can suspend him by what is known as an *ex informata conscientia* suspension.

Q. Indefinitely?

A. Perpetually or indefinitely, though some Canonists limit a suspension of this kind to six months. In that case the Bishop is bound only to state to the priest in the case that he has been so suspended. He is not bound to state the reasons or give names of the witnesses, neither is he bound to give him a trial, even though the trial be demanded, but the priest has the right to have recourse to Rome against such action, and the Bishop is bound, when the case is submitted to his superior, to present his reasons, and his superior in Rome, the Bishop of Rome, may reverse the Bishop's judgment and revoke the suspension.

Cross-examination.

Q. Now, in that *ex informata conscientia* suspension that you speak of, does the Bishop use his own power or does he use a delegated power?

A. May it please your Honor, I have read the testimony in this case, and I ask to say that our doctrine regarding the suspension has nothing to do with the present case, because there was no suspension involved.

By the Court.—It is legitimate cross-examination because the Bishop himself when or the witness stand gave testimony that in addition to the powers referred to in some book or council that there was this extraordinary power.

A. The Bishop in this suspension does not act by force of any delegated power.

Q. Must he not state that he does it in virtue of the power given him by the council of Trent?

A. No, sir; he need make no mention whatever of the Council of Trent or of the origin of his power, but he is required to state that he acts *ex informata conscientia*.

By Father Sheehan.—Q. Doctor, is it necessary by the laws of the Catholic Church that a candidate for sacred orders have the title of mission? Is his diocese guarantee for a becoming support?

A. Yes, sir; the title of a mission is so required in this country, and the diocese does guarantee support during the good behavior of the priest.

Q. I want a categorical answer.

A. I will give the law as it is.

Q. There exists at the time, or previous to the ordination of priest, a contract between him and the diocese for perpetual service of a missionary?

A. I have stated that, but, in obedience to the Ordinary.

Q. It is the duty of such cleric, is it not, to employ himself perpetually; is it not his duty as well as his right?

A. Well, granted what must be granted, yes; if the priest in question be able, his contract obliges him to render the service properly required; if he be able morally, physically and intellectually; but if he become unable, as to his physical, moral or intellectual qualifications, he is bound in conscience to ask for a release from his part of the contract; to refuse an appointment tendered and to resign an appointment held.

Q. If his rights and duties are correlative, if by the right in virtue of this contract entered into by the cleric and the diocese, for perpetual service in the diocese, is it not of consequence, by necessary implication, the duty of the Bishop to give him such employment?

A. He has no such right whenever he becomes disqualified.

Q. We are not speaking now, Doctor, please—

A. I refuse even to tolerate the opinion that a man unqualified has a perpetual right to a position in the diocese; such a proposition is absurd.

Q. It is my proposition. Suppose under these circumstances—

By the Court.—The only question is this: That this contract is perpetual. Of course that don't mean that there cannot be an exception to it. Is the nature of the contract a lifelong contract? Of course there are exceptions to it. There are conditions, and they might be dissolved. His lifelong contract may be dissolved, may be broken off by the unworthiness and the incompetence of the appointee.

By Father Sheehan.—Q. As the right of perpetual service exists by contract between the cleric ordained under the title of mission and the diocese, and as rights and duties are correlative, does it not by necessary implication follow, by common sense and law as well, that the bishop has a duty to give him an opportunity to so employ him? By the laws of the Catholic Church when a priest is just ordained, and ordained say to-day, and to-morrow, or to-day, has he not a strict right of ministerial employment in the diocese?

A. I distinguish. When a priest is ordained he secures to himself the right to exercise those ministerial offices which are provided for in the law. He has not a right to exercise those ministerial offices which are not provided for in the law.

Q. That is, he is bound. He has a right to exercise the ministerial offices to which, as a priest, he is competent?

A. If I were to answer your question categorically in the affirmative I know my answer would be liable to a misconstruction. He has a right to all those things which are secured to him by Holy Orders, Yes. He has, without any further action in regard to him, those rights which are not secured to him by Holy Orders but by the power of jurisdiction, No.

Q. Is it not usual in the United States for such jurisdiction to be given within a very short period after the ordination of priests?

A. Well, as a rule jurisdiction is given within a very brief period after the reception of Holy Orders.

Q. Sometimes the same day?

A. O, it may be granted in the same hour.

Q. Is it not ordinarily granted within a week if the young priest does not wish to take a vacation to see his friends and the bishop wants to employ him, or he wants to employ himself, merely presenting himself and getting his jurisdiction?

A. I have just stated that jurisdiction is usually granted within a brief period after the reception of Holy Orders. As to the priests ordained in our seminary at Cleveland, it is customary to give them a week or two of rest after ordination before conferring jurisdiction. But the custom as to conferring jurisdiction does not give any priest jurisdiction. This is conferred only by the specific action of the Bishop.

Q. I did not ask that question. I asked is it not customary in this country to confer jurisdiction ———.

A. Yes, sir. Oh yes ; but only upon worthy subjects.

By the Court.—I suppose the priest by ordination then is vested with a right to some work and also to compensation ?

A. His Honor says that the fact of his ordination seems to give him a right to a position in the diocese and to compensation. I answer, there is a distinction between the power of Holy Orders and the power of Jurisdiction ; the power of Holy Orders is conferred in the Sacrament of Orders which makes one a priest, that is, confers spiritual power and the grace required for the proper discharge of Church duties. The power of Jurisdiction is that power by which the priest rules his subjects. Both powers are required to accept and hold an appointment in the diocese.

By Father Sheehan.—But then, after jurisdiction is once conferred don't it remain with him ?

A. It remains until revoked by the Bishop, and the Bishop may revoke it with sufficient cause at any time, hence I say that no one can take charge of a parish or continue in charge unless possessed of the power of jurisdiction.

Q. And this jurisdiction, Doctor, is conferred by universal custom almost immediately.

A. No, sir. Jurisdiction is never conferred by custom ; jurisdiction is always conferred by a specific action of the Bishop.

Q. It is customary then to grant this jurisdiction. Has not the priest a right to a decent support before he receives this customary jurisdiction under the laws of the Catholic Church ?

A. I distinguish that he has a right to a decent support so long as he is possessed of good behavior ; he loses that right as soon as he violates the canons of the Church regarding good behavior.

By the Court.—The right inheres at the time of ordination ?

A. At the time of ordination and previous to the ordination the Council of Trent shows that he must establish his right to support.

After Recess.

DR. P. F. QUIGLEY recalled and examined by Father Sheehan.

Q. When a secular priest is ordained in this country and has this customary jurisdiction, under the law of the Church has he not a strict right to missionary labor in the diocese in which he is ordained ?

A. I must distinguish. He has the right to the position of one discharging the duties of a missionary so long as he continues fit for such duties. He loses that right as soon as he loses his fitness, and, having lost that right, the Bishop is empowered to take action against him.

Q. I don't ask that now. I acknowledge that all rights can be lost. The Bishop is bound then by the canon law to employ such a priest as soon as he has that jurisdiction. Is he or not?

A. The Bishop does not employ a priest in a certain sense, and in another sense he does employ a priest. The Bishop employs a priest in as much as he entrusts duties to his charge, and as long as he is so entrusted he has a right to continue the exercise of his charge. Whenever that trust is validly revoked he loses his right.

Q. That is, his jurisdiction is taken away, you mean?

A. I distinguish. Jurisdiction over a parish is taken away. The jurisdiction which constituted him a *quasi* pastor is revoked. But depriving one of the jurisdiction of a pastor does not necessarily deprive him of all jurisdiction.

Q. Then until he is deprived by the Bishop or his authority of this jurisdiction he is of necessity bound to labor in the diocese by canon law?

A. I must distinguish again. As long as the Bishop does not deprive him of jurisdiction he is bound to labor in the diocese in the sense that the Bishop *alone* has authority over jurisdiction. No. In the sense that he is bound to labor until the Bishop or his superior, or the force of established law, deprives him of jurisdiction. Yes. Let me explain. Give me a moment, if you please. I wish to say that jurisdiction may be revoked by the specific action of the Bishop, or it may be revoked by the Bishop's superiors, or it may be revoked by established laws, which declare, in a given number of cases, that as soon as certain actions are performed jurisdiction is lost.

Q. For instance, if the priest was excommunicated the jurisdiction would cease?

By the Witness to the Court.—Yes, if excommunicated nominally. Well, I would like to object to continuing this, if it please your Honor, not only because it opens up a question about different excommunications, but also because there is no question of excommunication involved in the case now under consideration.

By the Court.—I am unable to see the relevancy of this testimony to the case. I would like the witness to define what is meant by the term jurisdiction?

By the Witness.—Jurisdiction I think I have already defined as the power to administer the law. Now, jurisdiction is manifold. It is ecclesiastical and civil.

By the Court.—I had reference, if you will allow me, you spoke about after a priest is ordained as a priest, there is then conferred upon him what is called jurisdiction. What is that that is conferred upon a priest after his ordination, what is the meaning of the word jurisdiction, in so far as this case is concerned?

A. The jurisdiction received by a priest to place him in charge of a mission vests him with the powers required to exercise the ministry as to the locality or the things specified.

By the Court.—I suppose in common language it would be to exercise the functions of a priest in charge of a mission, or a priest in the diocese.

A. I beg to differ with your honor. The canon law in the matter is this, jurisdiction as to the administration of certain sacraments is conferred upon the priest as to the whole diocese. The jurisdiction as to the administration of a parish is not conferred except as to a given locality in the diocese.

By the Court.—It is admitted here that Father Sheehan was clothed with that jurisdiction at one time.

By Father Sheehan to the witness.—Q. With the exception of the extraordinary power given them by the Council of Trent for certain specified cases, does not the common ecclesiastical law of the United States, of the Council of Baltimore, exact a trial?

A. I ask to say to the Court that the statement involves a falsehood. If the question be put in the form of a question I will be glad to answer it.

Q. Except this extraordinary faculty or power of summary process by the chapter of the Council of Trent, including the specified character of crime of specified cases, with specified penalties attached, all other punishment in the Catholic Church in the United States, before such punishment is incurred does not the common law of Baltimore demand a hearing, with these exceptions?

A. I answer by stating that the Council of Trent *confers* nothing like the power referred to. Although the Council of Trent is

recognized as a source of law. I think that that statement implies that certain delegated or extraordinary power is conferred by the Council of Trent upon Bishops. There is no such *conferring* of power by the Council of Trent. Perhaps that is a sufficient answer to the question, if not I am open to further question.

Q. With the exception of the power granted for the specified cases in which this summary power can be so inflicted, do not all other penalties of an ecclesiastical character demand a trial by the common law of Baltimore? Do they not?

A. No, sir. For instance we may consider a penalty the removing of the pastor from one mission to another. Now the Council of Baltimore, No. 125, as I have said, states that the Bishop has ample power to transfer from one parish to another in the diocese according to his own good pleasure, without giving any trial.

Q. I did not speak of transfers. I acknowledge the power of the transfer of the priests in the diocese when and where he pleases. I asked when there is the question of an ecclesiastical penalty or punishment in law, with the exception of the exceptions provided by this summary process of the Council of Trent, does not the common ecclesiastical law of the United States demand and insist upon a trial or hearing before such punishment.

A. No. The Baltimore law provides for a trial only in "criminal causes," and many causes are debarred from trial by the laws of the Church.

Q. Then, if I understand you, will you please to specify the cases, as you have in your testimony stated here that they are specified, to which the Bishop is limited in this summary process provided for by the Council of Trent.

A. I have not understood your question. Do you mean that there are certain specified cases in which a Bishop can inflict and sustain an *ex informata conscientia* sentence—in other words exercise this power described in the Council of Trent?

Q. Please to specify those cases.

A. Those cases are only two in number; but I think this question has been ruled out. There is no question of suspension in the case under consideration; however, if his Honor will ask me to answer this question in relation to suspension *ex informata conscientia*,

I will answer it as given in Chapter I., Session 14, *de Reformatione* of the Council of Trent.

By the Court.—You specified fifteen cases?

Rev. Dr. Quigley.—The fifteen cases given are not identified with the points in question.

By Father Sheehan.—By this summary process, is the Bishop competent or has he the authority to deprive in any manner, at any time, from benefice or from office and state where that law is found?

A. If the Court will again ask me to state the law regarding this suspension, I will do so.

Q. Where is the law to be found? I insist upon the evidence; I want to have a distinct law of the Catholic Church upon that question.

By the Court.—If I understand it, the question is, if the Bishop, by virtue of his extraordinary power over a priest, can deprive him of his support in the diocese?

By the Witness.—The power regarding a suspension from a benefice is not necessarily the power regarding suspension from jurisdiction; but although the old law entitled one in old Catholic countries to retain jurisdiction, and, in certain cases, a benefice after one had been deprived of the exercise of sacerdotal functions, yet in this country the case is entirely different, because we have not a benefice in the country; therefore, as regards this country, the question in point presupposes that there is here what is known as a parochial benefice; there is no parochial benefice in the United States, and if the priest consequently is deprived of his jurisdiction there could be no benefice for him to hold on to.

By Father Sheehan.—Can a priest be deprived of his church—his congregation—by any summary process of the Bishop according to the late laws of the Catholic Church?

A. What do you mean by the late laws?

Q. By all laws of the Catholic Church in every country.

Q. If you please I will state to the Court that the laws which control benefices do not exist in this country.

Q. I take it now as it is in this diocese, without the word benefice, a priest is appointed pastor of a congregation here, can a Bishop, under any summary process of this Council of Trent, remove him definitely from his place—his mission—for crime without a trial?

A. May I ask you what you mean by summary process?

Q. That is without trial.

A. Yes, sir; Bishops in this country have power to deprive priests of a congregation without giving them any trial.

Q. That is to transfer from one congregation to another.

A. No, sir; they have power to oust them entirely in given cases.

Q. And give him no trial?

A. Without any trial whatever.

Q. Would you please translate this for the Court. Here is the law and instruction from the Holy See, that there must be a hearing. "But, nevertheless, thinking in our minds that because in the United States all these things cannot be easily observed, this Sacred Congregation thought it be provided for that at least all those things named below should be accurately gone through, and these investigations are thought to be entirely necessary before the Bishop can get to inflict any penalty." That is the instruction of the Holy See.

A. I beg to say to the Court that I am not free to accept as correct the translation offered.

Q. Can a priest ordained for a diocese in this country leave the diocese without certain formalities required by common law?

A. Oh, yes; some priests *can* do almost anything.

Q. I mean, canonically speaking, can he sever himself from the diocese?

A. No priest can under the law sever himself from the diocese to which he belonged *and be affiliated to another diocese* without the required formalities, yet one can canonically lose his title in a diocese without any formalities being observed.

Q. What formalities are required by the Council of Baltimore before a priest is considered as severed from the diocese to which he was ordained?

A. Before a priest is released from the diocese to which he belonged, and received into another diocese, he must procure letters *dimissorial* and, later, an *exeat*.

By the Court.—Do you take the position that Father Sheehan was not a member of the diocese.

A. I believe he was; he had withdrawn and been absent for four years.

Q. You deny that he was a member of this diocese?

A. We say that he was bound to give an account of himself.

Q. Do I understand you to say that he did not belong to this diocese at all?

A. Not at all. If he was a priest in good standing and continuing in charge, he belonged to the Allegheny diocese, because the territory to which he belonged, and in which he served, went under that jurisdiction. If he was not included under the jurisdiction of Allegheny, he belonged to the old diocese. He was bound to make an application for an appointment there, and abide by the decision of the Bishop or appeal.

Q. I understand your decision to be this, that he was a member of one of these two dioceses, either Pittsburgh or Allegheny?

A. Yes, sir; necessarily, where the title had not been lost.

Q. At the time that he came back—at the time that Bishop Tuigg became Bishop here, the plaintiff was a member of one of these two dioceses?

A. Yes, sir; but not in good standing. He was a *sacerdos vagabundus*—a wandering priest—bound to submit himself to his Bishop, yet through his own fault, belonging to no diocese.

Q. You admit that he was a priest of one of these dioceses?

A. Yes, sir; I admit he should have been subject to one of these dioceses, as, for all we know he never affiliated to another diocese. But before he was entitled to employment and salary as a priest he was bound to fit himself for the discharge of the duties of pastor.

By Father Sheehan.—Before a priest can sever himself from the diocese to which he has been ordained, he must receive from his Bishop letters *dimissory*, must he not? A. No, sir.

Q. To leave according to the law of Baltimore?

A. The law of Baltimore does not cover the case now under consideration. The case is covered by the law I adduced yesterday. It is this: A ruling by the Supreme Court in Rome has decided that as soon as a priest abandons the office of a missionary he loses his title in the diocese. I referred you to that law yesterday.

Q. Are there provisions in the Council of Baltimore requiring certain formalities to be gone through with before a priest can leave canonically his own diocese to be affiliated to another?

A. Yes, sir; there are regulations in the Council of Baltimore by which a priest cannot be affiliated to another diocese than the one

in which he has been serving without compliance with certain formalities, but there is no statement in the Council of Baltimore that without any formality a priest cannot sever his canonical connection with a diocese. I mean to say without any formality in relation to obtaining papers from his Bishop, a priest, by an abuse of power, can abandon the office of a missionary.

Q. A priest ordained for the diocese, does he not belong to that diocese until he is canonically severed from it? A. Yes, sir.

Q. Are not certain formalities required by the Council of Baltimore before canonical severance can take place?

A. Formalities are required by the Council of Baltimore, and those formalities must be complied with before a priest is capable of making a canonical application for affiliation to another diocese; but there is nothing in the Council of Baltimore that prescribes that certain documents must be obtained or must be had before the priest can sever his connection with the diocese by abandoning it. Have I not frequently stated this?

Q. You stated a moment ago that these formalities are not required?

A. I said a moment ago that without these formalities and against the canons of the Church a man may sever his connection with the diocese.

Q. Until he gets these letters from his own Bishop and presents them to another Bishop of another diocese, and until these are accepted by that Bishop of the other diocese, can a priest sever his connection canonically according to the law of Baltimore?

A. He can not. And even with that complied with he is not severed from the diocese until he will have returned to the Bishop and asked further than the letters permitting him to appeal for affiliation to another diocese for what is known as an *exeat*, by which, having found another Bishop willing to accept him, he is dismissed. I admit those are the formulas prescribed by the Council of Baltimore, but I repeat again that there is nothing that militates or can militate against the ruling of Rome which says that the moment a missionary abandons the office of a missionary he loses his title of that mission.

Q. You say by the abandonment of a mission, you mean that he is not longer amenable to the Bishop of that diocese, or merely that he has forfeited all his rights and privileges in that diocese?

A. I mean only the latter; he is amenable in law to his former Bishop. I did not say abandonment of a mission.

Q. It means, then, that he simply forfeits his right as a priest. Do you mean by the word mission, used in this Roman instruction, the diocese, which, if he abandon, he is to lose his lawful title?

A. A diocese does not necessarily mean a mission, as the diocese is regularly constituted under the old laws of the Church, giving the Bishops all the rights and powers that a pastor can have in the old canonical country.

Q. In the Instruction that you speak of, do not the terms mission and diocese, in the formal language of the Church, mean one and the same thing? A. No, sir; they do not.

Q. The term mission in this document that you get your title from, as quoted, does it mean diocese, or a particular portion assigned afterwards, which is in the popular language called mission?

A. The term mission is not in the passage I have quoted. The term that is in the passage that I have quoted is that of missionary. *Ubi missionarii officium dimiserint.*

Q. Would you translate that?

A. Certainly. I translate it, "As soon as he abandons the office of a missionary."

Q. Read it further. A. "He loses his title."

Q. What do you mean by that; as soon as he leaves the congregation?

A. No; leaving the congregation would not necessarily mean the abandonment of the office of a missionary, because after leaving a congregation one may resume that office in another congregation or be otherwise actively engaged in the diocese; but I suppose it is fair to state that abandoning the office of a missionary is giving up the discharge of the duty of a missionary for that period of time, to say the most, which is generally considered sufficient to destroy one's title to a benefice, and that is three years.

Q. Am I to understand then, that in your use of the word mission here, in regard to this Instruction, you mean diocese? I wish to know that before I proceed to examine further.

A. Well, if you want me to expound the whole document I will undertake to do so.

Q. Is the Instruction in this book, "Dr. Smith's Elements of Ecclesiastical Law," a recognized authority in the Church?

A. I am willing to accept said publication of the document in question as genuine.

Q. In this document, published in "Dr. Smith's Elements of Ecclesiastical Law," is the word mission, to which sub-deacon promises perpetual service, synonymous with diocese? A. No, sir.

Q. To what does the sub-deacon swear; to what mission, by this authority?

A. To that congregation which shall be designated lawfully.

Q. Does he swear at his ordination that he will continue his service in a certain congregation, or is it for a certain diocese?

A. Both, he swears at his ordination that he will serve the Church in whatever congregation in that diocese may be lawfully designated.

Q. He swears, therefore, to the diocese or to the particular congregation?

A. He promise services in the diocese, and, according to the direction of the Bishop. Serving the whole diocese and serving a congregation in the diocese are two different things.

Q. In taking the oath for the possession of this title of mission does the Church define the particular locality that you swear to?

A. No, sir. In the oath taken the particular congregation is not designated because of well-known reasons. But the diocese within which one must serve is designated.

Q. It is the diocese to which the subdeacon swears, and from which he gets his title of mission?

A. Well, I have answered that question three or four times.

Q. You have stated that there was a law of the Council of Baltimore making provision for sick priests and infirm priests?

A. No, sir; I made no such statement.

Q. On page 66, No. 90, you will find that there *is* a law——

A. There is no LAW there, but there is a RECOMMENDATION there.

Q. In reference to this recommendation was it forwarded to the Holy See? A. Yes, sir.

Q. Please state the answer of the Holy See on this proposition.

A. The Holy See sent that recommendation with the rest of the decrees of the Council back to us for what it is worth in its original text. As it was intended as a recommendation it was so recognized. Only that and nothing more.

Q. Were there any other recommendations attached to this one and sent to Rome by this Plenary Council?

A. No, sir; no other recommendation was forwarded by the Plenary Council.

Q. Are there any instructions from Rome with regard to this matter?

A. No instructions that change the nature of the decree or make it a law.

Q. What answer did the Propaganda in the revision of this Council, which is required according to the laws of the Catholic Church, make to the suggestion of the Bishop of Fort Wayne?

A. No answer that imposes any obligation or establishes any claim other than that which is now embodied in the decree. I am not, I confess to his Honor, the Court, prepared to cite the words of the suggestion of the Bishop of Fort Wayne, but my proposition is an affirmative one, and I know it to be true. It is this: The decree, as it is now found in the *Acta et Decreta*, page 66, No. 90, harmonizes perfectly with all that the Holy See has regulated as obligatory for this country. The Holy See has not given us any special law on this point.

Q. Are you prepared to swear that the Holy See—

A. I am speaking under oath.

Q. Are you prepared to swear that the Cardinals of the Propaganda in the revision of the Second Plenary Council of Baltimore, when they came to this proposition, that they did not make any further reference to the matter only to publish it?

A. Oh, no; but I do swear that they did not enjoin on the Bishops in this country any obligation regarding the matter further than that which I have stated.

Q. Did the Cardinals make any suggestions in this matter?

A. Well, what if the Holy See did make suggestions regarding this matter?

Q. It is a question of law.

A. There is no law in question at all. I am here to bear evidence as to the law.

Q. The recommendations of the Congregation of the Propaganda in the revision of the laws of the Plenary Council of Baltimore, do you acknowledge these as the laws of the Catholic Church?

A. No, sir. Why, your Honor, it is the height of stupidity to say that the *recommendations* of the Congregation of the Propaganda, regarding any matters of discipline in this country, or that even specific laws which are to be limited to this country, are the universal laws of the *Catholic Church*; and I beg to be relieved from making any further answers to a man that has so committed himself as to make such a mistake, which is enough to damn him in the sight of any civil or ecclesiastical court in the world as a stupid blunderer; a man who confounds the *laws* of the *Catholic Church* with the regulations and recommendations, or even *laws* for a specified *locality*, should not presume to conduct a case in any court.

Q. Is it the law of the Catholic Church that the acts of all provincial and plenary councils be submitted to the revision of the Holy See?

A. Yes, sir; that law is specified in a treatise of law by Benedict the 14th.

Q. When the decrees are so revised by the Sacred Congregation of the Propaganda, do they have the force of law in this country?

A. I distinguish. If the decrees themselves were intended by the legislators to have the force of law—Yes; because the legislators are possessed of legislative powers. But if those decrees are intended by the legislators simply to express a recommendation, an exhortation or a suggestion, they cannot by any possible, right construction be held to be laws.

Q. Under this provision did the Bishops ask for information from the Holy See as to what rights infirm priests had, that were ordained for the title of mission; and are you aware that such an answer has been returned in the revisory letters of the general instructions? A. Will you please state what answer?

Q. That while they were pleased at the interest of Bishops with regard to their changes as to infirm priests, still they would not allow this to be made a law, and provide for the rights already obtained by the right of title, and they furthermore struck out several sections of kindred recommendations under the directions of the Propaganda and would not even allow it in the book at all, is that so or not?

A. I am not aware that your statement of the case is correct. But I attest that there is no special law upon the matter other than that which I have given.

Q. What obedience does a priest, in virtue of his promise made in his ordination, owe to the Bishop of his diocese, Doctor?

A. All obedience.

Q. Uncanonical obedience?

A. Uncanonical obedience is unknown in the law.

Q. Would you please to state the extent of that obedience and quote where I will find the law governing it? I suppose you do not contend that the Bishop can tell a priest to do anything?

A. Well, yes, sir; anything within the law. The Bishop may in conscience require a priest to do everything properly the object of obedience.

Q. Suppose the Bishop would tell you to black his boots, would you do it?

A. I doubt if my Bishop would tell me to do so. Were he to tell me to do so I would do it, and I am not quite sure that I am worthy to do it. But our Bishops claim no right to command priests to turn boot blacks. I would rather be a good boot black than a bad priest.

Q. There is a limit to this obedience promised in this ordination? A. No, sir.

Q. No limit? A. No, sir.

Q. Where do you find the law for that?

A. The promise is to obey, and all obedience is the observance of law, and the law is specified in the books.

Q. Then the Bishop has a right to obedience so far as the law says, and no farther? A. The law, rightly interpreted, yes.

Q. Does not the obedience promised in the ordination, according to Pope Benedict 14th, consist in two things; first, the duty of remaining in the congregation of the mission to which the Bishop assigns a priest until he is properly relieved from such congregation, and the duty of obeying the Bishop when called to the synod. Is that the oath or not, Doctor.

A. I don't recollect that oath, or all you claim, as identical with the teachings of Benedict the 14th.

By the Court to Plaintiff's Counsel.—Turn to the page and show it to him, and ask him if that is one of the recognized standard authorities of the canon law. [Book shown to witness.]

Q. Is that book recognized as a standard work?

A. This book is recognized as a compendium of the moral theology of St. Alphonsus, and, for the most part, is about the same as "Gury's Compendium of St. Alphonsus." I do not object to any of its principles. The work has been very highly commended.

By Plaintiff's Counsel.—I want to know the extent of the obedience promised by a priest, promised in his ordination, to what things it extends?

A. Ah! to *what things* the obedience *extends*. The obedience promised the Bishop in ordination extends to the charge of the mission and to the faithful discharge of all incumbent duties as assigned by the Bishop.

Q. I think you said because Dr. Smith's "Notes" hadn't the *Imprimatur*, therefore it was not authority. Where is the law on that point?

A. The law of the Catholic Church requires, under penalty of being forbidden, all books treating on faith or morals to be submitted for the *Imprimatur* of the Bishop of the diocese in which the books are published. This is found in that part of the law which treats of the *Index*.

Q. As to the *Index* and its rules, are they in force in this country, either in conscience or otherwise?

A. Yes, sir. The laws of the *Index* are of force everywhere. This is not only the teaching of the Masters, but is likewise the decision of the Holy See.

Q. In all its parts?

A. At least as far as the *Imprimatur* is concerned, and that is the point in question now.

Q. What class of books require the *imprimatur* according to this law?

A. According to the laws, books that are known as Bibles, catechisms and prayer books, and works on theology and canon law, etc.

Q. Where do you find the *imprimatur* required beyond the class of Bibles and prayer books?

A. In the laws of the Index. Likewise for us, in a special law in No. 502 of the Council of Baltimore: "Now, by the law of the Church, books relating to religion and the worship of God, are forbidden to be printed without the approbation of the Ordinary." In the pastoral letter all the fathers of Baltimore say, p. cxv., under section 6, "on books, newspapers," etc.: "The Council of Trent requires that all books which treat of religion should be submitted before publication to the Ordinary of the diocese in which they are published, for the purpose of obtaining his sanction, so as to assure the faithful that they contain nothing contrary to faith or morals. *This LAW is still in force*, and in the former Plenary Council its observance was urged. You will find that law furthermore asserted—

Q. Do you call the pastoral letter of the Bishops in Plenary Council a law?

A. I call it an evidence of the law.

Q. Is it the law, Doctor? I want the law. This pastoral letter is not law.

A. This pastoral letter has the force of law, or at least the force of an authoritative interpretation of the law. The combined testimony of all the Archbishops and Bishops of the United States proves that the laws of the Index obtain here.

Q. As I understand you, Doctor, that a pastoral letter of the Bishops of Baltimore is an evidence that the laws and rules of the Index are in force regarding the *imprimatur* of books in this country? Yes or no? I want to find out the value of this work.

A. Yes. I have told you that this work is prohibited, reading it without special faculties from the Bishop is prohibited, and violating the laws of the Church on this point, could be punished by excommunication. I can close this question, I think, by quoting a few lines sent to this country from Rome, under the following circumstances: Certain teachings appeared in Dr. Smith's Elements of Ecclesiastical Law, claiming that the laws of the Index for such books as this one under question were not in force in this country. In a little work of mine I criticised this teaching. Dr. Smith's teaching and my criticism were submitted to the Holy See. The Holy See decided as follows: "The fifth criticism (by Dr. Quigley) has reference to the force of the decrees of the Index, whose binding force in the United States is questioned by the author (Dr.

Smith), on this head the criticism has a foundation and the author (Dr. S.) deviates somewhat from the Roman teaching."

Q. In the contemplation of canon law does a universal custom acknowledged and settled by Bishops and priests from time immemorial in this country, does it not abrogate a law?

A. No, sir. Our Bishops and priests have no power to abrogate the laws of the Index.

Q. By custom?

A. There is no custom such that it abrogates these laws.

Q. Can a clergyman make an appeal proper except he has a sentence pronounced upon him, Doctor?

A. A clergyman cannot make an appeal proper except in the cases excepted in the law, unless from judicial sentence.

Q. A judicial sentence is an essential requisite before an appeal can be taken properly? A. No, sir.

Q. You can appeal from—?

A. Any injustice.

Q. Yes, or, no, Doctor, is not a sentence necessary to be passed upon a person before he can appeal from it?

A. No, sir. A judicial sentence is not necessary.

Q. You can appeal from a Court without being sentenced?

A. Yes, sir. You can, in given cases, appeal from the Bishop who fails to give, or refuses a trial.

Q. You can appeal from the Court of your Bishop before he has pronounced any sentence upon you, you can appeal to the Court of the Archbishop or of the Holy Father in Rome?

A. Yes, sir.

Q. Before the Bishop has pronounced the sentence upon you?

A. Yes, sir; before any judicial, formal sentence be pronounced.

Q. That is before the sentence is put in execution?

A. No, sir; but before any trial is granted.

Q. Is it possible that any person can ever appeal to have a sentence reversed by the Ecclesiastical Court when there is no sentence pronounced?

A. Yes, sir; even when no technical sentence has been pronounced.

Q. Impossible, my dear friend?

A. Reiffenstuel says that there lies to the Archbishop or the Pope an appeal from every injustice done a priest by his Bishop.

Q. I want to know again, is it possible that a Canon Law Court can be appealed to to have a sentence of the lower Court removed if the lower Court did not pronounce a sentence at all?

A. It is; a priest aggrieved under any action of a Bishop, without any formal trial having been held, and without any sentence having been pronounced, has full power to appeal to the Superior Court.

By the Court.—Will an appeal lie, an appeal in the strict, canonical sense of the word, for a priest from the refusal of a Bishop to give him work in the diocese where there are no formal charges against the priest, no trial, and no sentence pronounced by the Bishop?

A. Yes, sir; may it please the Court, I didn't say that there was no appeal, I said *under the general law* on appeals, there would not be, in the case you give, a strictly, so-called, canonical appeal; but by special canons an appeal lies in such cases.

By Mr. McKenna.—You might give an explanation.

A. Appeal, the usual means for redress of grievances, is manifold. First of all there is what is called a respectful remonstrance. You will find this in Craisson, No. 644, etc. Respectful remonstrance is simply addressed to one's immediate superior, himself, by the party who, in reality or in his opinion, is aggrieved; secondly, an appeal, strictly so-called, or removing a case already adjudicated upon from one Court to another, with a view to have sentence reversed; the third means of redress is, complaints addressed to one's superior against extra judicial actions or grievances imposed by one's superior. An appeal, strictly so-called, lies against every grievance inflicted by the Bishop, after formal trial, upon a subject, excepting those cases that I read to you this morning, as excepted by the law. Even when no trial was had, a canonical appeal lies in the cases specified in the law.

Q. I think you testified as to the harmonies and beauties of the ecclesiastical law, the remedy of all grievances; that is, every grievance has a prompt remedy in the ecclesiastical law and courts?

A. Sufficiently prompt remedy is provided for in the law.

Q. Do you mean a canonical trial or an investigation?

A. Either, according as the circumstances regulate. I testified this morning that No. 77 of the Plenary Council of Baltimore provides for a trial in criminal causes; that the Instruction sent to this

country on the 20th of July, 1878, provides for an examination as to the facts in the case when there is a question as to ousting a priest from the parish, and that common law provides for appeals.

Q. Is the Bishop bound by the law to give a hearing?

A. When asked he is bound, except in the cases given by the canons already adduced.

Q. Is it the custom in this country, or is the law more honored in the breach than the observance in this country; is it not practically impossible for a priest to get a hearing at all?

Objected to.

Q. Is there any way of compelling a Bishop to give a priest his livelihood? A. Yes, sir.

Q. For instance?

A. To conduct one's self properly and discharge the duties assigned one; or if, while so doing, aggrieved, to appeal.

Q. Suppose he wants to get a hearing to know whether he does conduct himself properly or not and is refused, is there any way of reaching a remedy for that grievance? A. Yes, sir.

Q. For instance?

A. To apply to the Bishop's superior for a hearing.

By Father Sheehan.—When the Holy See entertains an appeal, the fact is an evidence that it was proper to object in the first place?

A. If entertained by the Holy See as an appeal, Yes, sir.

Q. Is there any way to compel the Archbishop to listen to your appeal—any way known to the canon law here in the Catholic Church?

By the Court.—I ask this question. The question was: Suppose a case where a priest in good standing asks the Bishop for work, and the Bishop did not give him work, what remedy has a priest, if any?

A. Remedy against the refusal of work?

Q. Refusal of the Bishop to give him work?

A. He could call upon the Bishop to give him support, provided his application were a legal one. Furthermore, an appeal would lie from such refusal, supposing there were work to do, against the injury done to a priest in good standing by such refusal.

By Plaintiff's Counsel.—Doctor, will you state what and where is the highest Ecclesiastical Court having jurisdiction over the United States? A. The Propaganda at Rome.

Q. You call the highest Ecclesiastical Court known to the Catholic Church of this country a bureau, do you ?

A. Not a material bureau with drawers, bottles, etc., but a legal bureau. I think we talk about bureaus in Washington. If I am wrong in my language I will be corrected.

Q. Does the Cardinal Prefect of the Propaganda alone constitute the highest Ecclesiastical Court having jurisdiction over the United States?

A. Oh no, the highest, the Supreme Judge in our Church is the Pope. The Propaganda consists of a number of Cardinals—one of them known as Prefect—; a Secretary, the *Assessor* of the Holy Office, twenty-four Counsellors, and many minor officials. The Holy Father is practically the head, the Supreme Head, not only in that Court, but in the other Courts of the Church.

Q. When there is an appeal brought, I want to know what Court I can appeal to in the Catholic Church in this country? I want that question answered.

A. The Court of the Archbishop.

Q. After the Archbishop. He is not the highest Court here.

A. Yes, sir.

Q. There is an appeal to the Archbishop?

A. Yes, sir. The Archbishop is bound to receive an appeal against any Bishop in his jurisdiction within the given reasonable time.

Q. Is there any manner of compelling the Archbishop to listen to an appeal. Suppose he does not listen to it at all. Suppose he tells you it is none of my business?

A. Well, he is, I suppose, a judge of what appeals do come within his jurisdiction.

Q. Suppose a priest comes, and possibly with a retinue of priests, and he wants a case to be heard, simply whether this man has been aggrieved or not, and we say Archbishop, will you give us an appeal. I know nothing about it, he says. What remedy have you to compel the Archbishop to hear you?

A. You can't compel the Archbishop to hear when he refuses to hear, but there is a remedy. You can go directly to Rome.

Q. When we reach Rome; I am talking of an appeal proper; in what ecclesiastical court of the higher order or of the next rank can I appeal to after a refusal by the Archbishop?

A. If he would refuse the appeal you could appeal to the Propaganda, at Rome, either by going in person and asking to see the prefect or secretary, or sending your case written.

Q. The Propaganda is the name of a house, and the name of a bureau, and the name of a society?

A. Well, yes, sir; and the name of a college. Let me tell you about the congregation: It was established by Gregory the 15th, and consists of a number of cardinals, one of whom is the Cardinal Prefect, a secretary generally vested with the dignity of the prelacy, counsellors and a great many minor officials. The Propaganda has in its exclusive charge the ecclesiastical affairs of all missionary countries—is for missionary countries what all the other congregations in Rome are for all other countries. Wherever an ecclesiastical matter goes to Rome from other than a missionary country, it is sent to the congregation which has special charge of the matter contained therein. Ecclesiastical matters in this country, which is a missionary country, do not so go to the special congregation, but they go to the Propaganda, so this congregation for practical purposes is really equivalent to all the congregations at Rome combined as far as we are concerned. It is vested with all the powers that are vested in all the other tribunals, and for *all* Church matters we must apply to it.

Q. Is there not a Cardinal called the Dean of this Congregation of the Propaganda?

A. No, sir. I decline to answer any more questions as to this point.

Q. Can a Bishop grant an indefinite leave of absence to a priest?

A. I think not, sir.

Q. Supposing a priest has resigned a parish and his resignation has been properly accepted by his Bishop, and his Bishop gives him permission to leave the diocese, and he renews that permission from time to time, and the priest remains away for several years, and the priest returns to the diocese, and the same Bishop is in that diocese, and the same Bishop receives him as a priest of the diocese, would the Bishop be acting canonically in doing so?

A. No, sir. He would not be acting canonically to *receive* him as a priest of his diocese; he would be acting canonically to recognize him as a priest of his diocese.

Q. He would be acting canonically to recognize him as a priest of his diocese. If the same priest would ask the same Bishop to give him a parish in the diocese would the Bishop be acting uncanonically to give him a parish ?

A. I distinguish. He would be acting uncanonically to give him a parish without sufficient evidence of the man's fitness to fill the position ; he would be acting canonically if he gave him a parish after having received sufficient evidence regarding the qualifications specified to fit a man for the mission.

Q. Suppose there are no questions as to the man's ability to fill the position, every canonical impediment has been removed, would the Bishop then be acting uncanonically to give him a parish ?

A. No. Nor would he be acting uncanonically if he refused to give him a parish.

Q. You spoke in your testimony of a priest superannuated, and said he would have a right, so far as charity was concerned, to be supported, did you ?

A. I think my language was that where a priest without any fault of his own is incapacitated from the discharge of the duties of the parish through old age or otherwise, he is entitled to a becoming support, though not by force of any special law of this country, but he is entitled to support under the general obligation of charity.

Q. Supposing a priest in good standing should, through no fault of his own, become incapacitated, and, supposing he would make an application to his Bishop for support, and the Bishop would refuse him. I mean, the Bishop freezes him out, won't have anything to do with him, what is the remedy ?

A. Well, if there were less hot-headedness in a certain direction it would scarcely be necessary for me now to explain that a Bishop is not bound to assume the responsibility of personally providing for disabled priests ; there is no special law, diocesan or other, that compels a Bishop, from his own personal resources or from parochial or diocesan property, to provide for disabled priests. But I have stated, on page 66, No. 90, of the Second Plenary Council of Baltimore, the means provided for priests who through no fault of their own have become incapacitated.

Q. Well, suppose a Bishop should permit the resignation by any priest of his benefice who has nothing else for his decent support, who would be bound for the support ?

A. Well, the old law says that if the resignation be absolute and unconditional he is not entitled to any support from the benefice, but if there was a specified stipulation when resigning that he shall continue his title to support, he is entitled to support from the benefice which he possessed. It was against the old law to accept an unconditional resignation where there was no understanding to secure support. But in this country we have no benefices.

Q. I wish you would take this book [book handed to witness] and tell me if my translation is correct—"An Ordinary who permits the resignation made by any priest of his benefice who has nothing else for his decent support is bound to support him?" Is that correct?

A. Yes, sir, substantially; but you must take into consideration that what you have here translated is a decree in reference to a question put to the Congregation regarding the resignation of an ecclesiastical benefice; not the resignation of a priest in the United States, where there are no benefices.

By Mr. Reardon.—Then that decree does not apply here?

A. By no means.

By Mr. Watterson.—What is the reason of that law?

A. Well, the answer to your question may be found in the axiom, a law is of strict interpretation; but I decline here to go into the question further, because of the fact that there is no pertinency in this matter, as there is no benefice in this country.

Q. Can a cleric be ordained or could a man be ordained to the title of his own industry?

A. No, sir. No such title of ordination is recognized in the law.

DR. EDWARD HECHT was sworn on behalf of defense, and examined by Mr. M'Kenna.

Q. Doctor, I believe you were for some years professor in a seminary in Cincinnati.

A. For about 12 years.

Q. Where are you located at present?

A. I am professor in the Seminary of Cleveland now.

Q. What chair do you hold?

A. The chair of Dogmatic Theology.

Q. Do you hold any degree, and if so, of what colleges?

A. I am a Doctor of the Canon Law. That is the only title I want to assert here as bearing on the case.

Q. Where was that title conferred?

A. By the University of Rome, in the City of Rome.

Q. You have read the testimony here in this case and the papers. I wish you would state whether you are familiar with the issues raised by it.

A. Yes, sir; I have read the testimony given, and from what I have seen, the question at issue between the plaintiff and the defendant is a question of what we call in Canon Law a denial of justice. There is no positive act charged, and in Ecclesiastical Law we call it a denial of rights, an injustice.

Q. Now for such cases—denials of right—is there any redress?

A. Yes, sir.

Q. If so, state what redress there is in the Catholic Church?

A. In this case, in the case specified, as I understand it, it would be to give information, either by interviews with the Archbishop or by writings, of having had rights denied by the Bishop.

Q. That would be the redress in the first place?

A. The first redress. To support this position, I have here an authority that has been referred to very often this morning, Riffenstuel, on the point in question. "It is an Archbishop's right and duty to correct the neglect of the Bishop in case the Bishop has denied any rights;" now, this applies not only to the case of clerics, it applies in all cases of the laity; it is a general principle.

Q. What book is that?

A. This is Reiffenstuel, vol. 1st, page 428, No. 29.

Q. Suppose that a denial of right as claimed involves a question of support, maintenance or salary, is there any redress for the money matter growing out of that right in the Catholic Church?

A. Now, the rights may be two-fold. There are rights to office, and by denying the rights to office you may injure the person to whom you deny the office. Now, by denying an office to which the applicant is entitled, not only the superior would have to decide whether the denying has been according to the canons or not; for instance against the defendant in this case the Archbishop would not only decide that the Bishop must give the office applied for, but the Bishop would also be compelled to indemnify the applicant for the loss he has sustained in money. This would be the result of the decision. The one follows the other.

Q. State your opinion, whether from the facts in evidence in this case it is one of indemnity or of the mere standing of the priest?

A. Now, the question as it appears to me is essentially a question about the right of Father Sheehan to hold an office in the Church. Because I must, from the beginning, protest against certain points which are in the testimony, and the point seems to be this, that the priest, by the only and sole fact of his ordination, has a right to support. This is entirely new in canon law to me; the priest is ordained, and it is a condition that he live within the Church, and perform the ecclesiastical functions in the Church, according to the canons of the Church, and whenever in the course of his administration, in whatever position he may be placed, he violates the canons, he may lose that office, and losing his office he loses the emoluments. I would like to substantiate what I have just said. I maintain that to say that the priest only because he is ordained a priest is entitled to any support whatever is incorrect. He is only entitled to support according to the canon law, both in the statute laws of the United States and the common law of the Church, as far as he renders the services that he is ordained to render. Official provision has been made for his support. I say a priest has a right to compensation for services rendered; but he is not entitled to a salary when he renders no service. I submit in evidence, to substantiate this, a passage of the Plenary Council of Baltimore that has been submitted or at least alluded to very often. This passage, page 66, No. 90, is this: "Lest priests to the disgrace of their sacred order be compelled to beg or suffer want, we exhort the

Bishops to admonish the faithful of the duty whereby they are bound to furnish a fit support to those especially who labor in preaching the doctrine. But if, through sickness or any accident, they are no longer able to perform their sacred duties, let the Bishops take care, that such assistance as they deem necessary, be given them by the faithful whom they have served. If the congregation which the infirm or otherwise incapacitated priests have served be so poor as not to be able to furnish such assistance, we exhort the Bishops to excite, in the best way they are able, the charity of other priests and of the laity to assist them. That the Bishops, we very much desire, in their respective dioceses, as soon as they can conveniently do so, with the council and co-operation of the priests, establish a certain definite and fixed plan whereby provision may be made for the aged and sick or those otherwise incapacitated." Now, the conclusion to which I call special attention follows, it is this, "We are unwilling, however, that this decree should be of any advantage to those who are unworthy or who may have opposed the legitimate authority of their Bishop or who may have refused to contribute towards the charity fund of this kind." Here is the law as it is explained in the Plenary Council of Baltimore. Then I say that every young man at the time he is ordained is well aware and cannot but be well aware of the fact that in order to have a right to support from the Church while in good health or in bad health he has to lead a life according to the canons of the Church. This is the law; now, in accordance with this I would advert to another book which is an authority in the country, and has a bearing upon this case. I say that we have no benefices. It has been said time and again there are no benefices, notwithstanding there is what we call a *beneficium manuale*, that is the right of support while you are in the mission. That kind of benefice is here. But I say that the very definition of a benefice in the Church implies that the money or the compensation, or the emoluments even, are not given simply to a man because he has chosen once to have himself ordained, but because he renders actual services in the Church. Now, the definition is this, in the Compendium of Moral Theology of St. Alphonsus, by Konings, on page 270, you see the definition of a benefice. The translation is this: "A benefice, it is the perpetual right." But the word perpetual does not apply to this country. There is no benefice that is perpetual here. Every priest appointed

to a mission can be revoked without any trial simply through the act of the Bishop. This is the common law asserted in the Plenary Council of Baltimore. Let me continue: "A right to derive emoluments from the goods of the Church on account of a certain spiritual office, established by the authority of the Church, an office to be exercised by the individual who holds the office in person"

Q. You cannot fill the office of a mission through another, you cannot have a deputy?

A. *Pro tem.*, for one day or so, but you cannot put another in your place and claim the emoluments. Now I call the attention of the court to this point: my intention was to show that the simple fact of ordination implies no right to support or emolument. That is the point.

Adjourned until Friday, April 29th, 1881.

SESSION OF FRIDAY, APRIL 29TH, 1881.

DR. HECHT recalled and examined by Mr. M'Kenna.

Q. Doctor, you have read the papers in this case and I wish you would state whether the case belongs strictly to the jurisdiction of the Church, or whether it belongs to the jurisdiction of the civil court?

By the Court.—I would call the attention of the counsel to this, that the witness cannot say that he had read the evidence in this case and say this court has not jurisdiction.

By the Witness.—A. The case, as I understand it from what I have read on both sides, is this—

By Mr. M'Kenna.—From the complaint and the answer, can you say whether ecclesiastical courts take jurisdiction of just such cases as this? A. Yes, sir.

Q. For the denial of the appointment to a mission of a properly qualified applicant, and because of want of affirmative proof of applicant's standing, do the laws of the Church afford ample relief?

A. Yes, sir.

Q. You may state what redress.

A. Now in the case at issue, in which Bishop Tuigg is charged as having refused an appointment when asked to do so, the proper course to follow would have been for the plaintiff in the case to cite the Bishop to the court of the Archbishop and compel him there to show cause why he should not give him an appointment in the

church. This was the proper course to follow. Then in case the Archbishop would have sustained the Bishop's action, another appeal could have been made from the decision of the Archbishop to the Superior Court, to Rome, to the Propaganda, and it would be decided in the Propaganda whether the priest had a right, or was entitled, to an appointment or not. Their decision would have been final. This was the proper course to follow according to the laws of the church.

Q. If such a denial of right to an office or mission is based upon grounds involving no question of moral qualification but because of the division of a diocese, leaving the applicant's last place of holding office in the new diocese, and the Bishop applied to, refuse his application, basing his refusal on the ground of his not being a member of his diocese, would the applicant in such a case have any redress for such an action, and if so, state the remedy?

A. Yes, sir. The remedy would be similar to the one I have just suggested in the other case. Then the priest in order to get his rights concerning the appointment would have first to get his rights concerning the diocese to which he belongs. Then it would have to be established by the judiciary that he belongs to this or that diocese—the case is in doubt. I am not prepared to say whether Father Sheehan belonged to Bishop Tuigg or Bishop Domenec. At any rate he belonged to either one or the other; and that was simply the question to be settled by the courts of the church.

Q. That is what is called an open question?

A. Yes, sir; and it would have to be settled. And for that he had the same remedy as he had for not getting appointed.

Q. Now, I want to call your attention to some expert testimony offered by the plaintiff. Has the principle, "No man is bound to accuse himself," as applied by the expert witness for the plaintiff in this case, any application as to the question of an applicant seeking an appointment to the care of souls, or an appointment of a mission?

A. If it has any bearing on the question it is not in favor of the plaintiff. Because the very fact that he invokes such a thing would imply that he is not worthy of receiving the appointment.

Q. You have read the canon law so far as it is quoted by the experts of the plaintiff here. You can state whether that is a full and

complete quotation, or whether it has a bearing on the case as contended for by them?

A. Now canon law as it is quoted by the counsel, or rather by the agents in the plaintiff's case, is quoted in a way altogether novel to me, because they quoted in the code here, concerning the priesthood, only one part, that is the part concerning the rights of the priest, and they forget altogether to mention that there is in conjunction a criminal code for the clerics, too. They forget, moreover, to show that there is also a penal code. In their quotation of the canon law they take only the rights, supposing, therefore, that the priest can be absolutely incapable of any misdemeanor in office for which he should be punished.

Q. They ignore the other?

A. They ignore the other. And I maintain, in canon law, we have just the same divisions as you have in civil law. I never saw a code of civil law that has not civil rights, or a civil code as it is called, and then the criminal code and the penal code; I have seen that everywhere.

Q. Is even their statement of the portion of canon law, as bearing upon the rights of priests, correct and full?

A. No; I could not say that it is full, because they—though I am not prepared to say that it is simply for the benefit of their case, or to meet the wants of their case—simply maintain one point which I have already tried to overthrow yesterday; the whole testimony in their case goes to show that only the fact of being a priest entitles a man to have a salary, whether he does any service or not. And by doing this what is the result? According to my candid opinion it amounts to neither more nor less than putting a premium upon getting into difficulty with a Bishop, and giving up work, as he will be made to support you for the balance of your life—and that is not the idea of the canon law as I find it.

Q. Doctor, is it anywhere written, as recited by the plaintiff in his testimony, or in the written law of the Catholic Church, that priests are forbidden to appeal? A. Nowhere.

Q. Will you quote the decision of the Vatican; the most recent decision on the subject?

By Plaintiff's Counsel.—We concede all that.

By Defendant's Counsel to the Witness.—Can the recommendation for collections among the priests and the laity for the support

and maintenance of infirm and disabled priests, as provided for in the Second Plenary Council of Baltimore, be held to apply to any but worthy and qualified priests?

A. I answered that question in full yesterday. I maintain that the decree is only in favor of those who are worthy.

By Plaintiff's Counsel.—We admit that.

By Mr. McKenna.—Suppose the Bishop refuses, from the contributions of the faithful, to grant support or maintenance to a priest, infirm or superannuated, either because he alleges the priest was not a fit subject for such relief, or because of his being a foreigner to the diocese; from such a decision of the Bishop do the laws of the Church provide for any redress?

A. Yes, sir; under whatever pretence the Bishop should refuse assistance, either under the pretence that the priest is unworthy, or that the priest is a foreigner to his diocese, the priest in question has a right to go to the High Courts of the Church just in the way I have stated in the cases already proposed; he has a perfect right to go to the Archbishop and from the Archbishop to Rome.

Q. They will entertain the complaint?

A. They will entertain that, because the Church is anxious that none of her priests should suffer, only I may state here that in case the priest is among those called by the Council of Baltimore unworthy, he gets, neither according to the statutory law of the United States, nor according to the common law of the Church, in any country of the world, anything like a pension. He has then an opportunity to go to a religious house, or to any other place to which the Bishop may assign him, and there the diocese will pay all that is required for his board, lodging and clothing. That is the end of it. He is not left on the street. I want to call the attention of the Court to this point, that nowhere in the world has a priest who is unworthy a right to a pension.

By Plaintiff's Counsel.—We acknowledge that. I acknowledge that when a priest is canonically pronounced unworthy he has no claim to exercise his mission or to get support from his Bishop.

By Defendant's Counsel.—Now you have described the remedies for refusing to apply charity to a priest unworthy of it, you say that where a priest claims that he is qualified and entitled to receive a pension, and that fact is disputed, a priest has a right to appeal?

A. I don't understand the question.

Q. Suppose a Bishop refuses from the contributions of the faithful to grant the support and maintenance?

A. I have answered this question by saying that he has a right by going to some court where he can find a remedy against all grievances. I suppose that answer is plain enough.

Q. Now, under the facts in evidence here as read by you, give your opinion whether as an applicant for an appointment the verbal application by the plaintiff to the Bishop, and unaccompanied by testimonials or evidence, was a legal application or not according to the Canon Law?

A. According to the Canon Law such application has no value whatever.

Q. No value whatever?

A. No value whatever. The mere fact of applying does not show that the applicant is fit to fill the office for which he applies, or to use a biblical figure, how would it be if the wolf would choose to apply to take charge of the flock and expect the shepherd to appoint him?

Q. If not a legal application in the Canon Law, was the Bishop bound to receive or act upon such application?

A. He could not. It was not a proper application.

Q. Now, you are familiar enough with the Canon Law as to what are the requirements for an appointment to office. What of the case where a newly appointed Bishop finds a man out of office?

A. Now if a man is out of office, it is *prima facie* evidence that he has for some reason been put out of office. Then if he wants to be restored to office, he ought to show that he has the qualifications to be in office. It is just for this new appointment as it is for the first appointment he gets. He wants an appointment from the new Bishop, and he is just in the condition he was when the first Bishop conferred his first appointment. It cannot be supposed that the new Bishop to whom he applies knows all about his standing. He can only know it by written *dimissorials* or other evidence.

Q. What presumption in canon law is to be made by the Bishop's successor with respect to not appointing to office.

A. It is supposed that the Bishop must have had his reasons for not giving an office to the applicant in question.

Q. You say that an applicant to the new Bishop would be obliged affirmatively to show that he possessed all the qualifications?

A. Decidedly.

Q. Where a Bishop comes to a diocese and a priest in that diocese may have been without work at the time, the presumption is, that he is unfit to have charge, without the Bishop hearing anything about him or knowing anything about him?

A. Without the Bishop's hearing anything about him, the presumption is, in a case where a priest for a long time has been kept out of office by the predecessor—

By the Court.—That is going further than the presumption. What I am getting at is, what was the presumption in canon law, simply because a priest in a diocese was not in active charge of a mission, without anything at all being urged against him.

By Mr. McKenna.—Q. State what the law is in that case.

A. If you please, the answer would be that the priest out of office is in the same condition as the young man who wants to be ordained and presents himself for a mission. The Bishop must have evidence as to whether the candidate for ordination, or the applicant for office, is qualified according to the canons of the Church, and therefore if he finds a priest out of office he is in duty bound to refuse him an appointment until he ascertain whether the priest is qualified or not.

By the Court.—I don't doubt that.

A. This is the point in the question, I think.

By the Court.—No. I am speaking merely of the presumption arising in this case in question. No question at all, but that the Bishop finding an unemployed priest, has a right, and there is no doubt about his right to ascertain—

A. Your honor, the Bishop cannot appoint on presumed qualifications. The qualifications cannot be presumed and must be proven.

By Mr. Reardon.—Q. And the burden of proof is on the plaintiff?

A. On the plaintiff, certainly.

Q. In other words, unless he offers proof of qualifications there is no application?

A. That is the canon law. I repeat positively that qualifications for the holy ministry are not presumed, they must be proven.

Q. Now, Doctor, as in the Church the Bishops are invested with judicial power, are not their decisions as well as their sentences subject to repeal and reviews in the higher courts of the Church?

A. In the case in question, the Bishop telling the applicant, 'I don't think you have the qualifications,' or, in other words, 'I can't appoint you,' the applicant would have the same remedies for redress as those stated before, and he could then bring the case before the higher authorities.

Q. Now, Doctor, in the plaintiff's testimony he testified to having performed, while in Rome, certain priestly functions, and that was done with the approbation of Bishop Tuigg's superiors. I want to ask you a question on that subject, you having read the plaintiff's testimony. Now would the permission of the local authorities in the Church of the city of Rome to exercise the single function of celebrating mass in the churches of that city, during the sojourn of plaintiff therein, have any bearing under the law, upon changing his status or restoring his qualifications as a priest competent to be entrusted with the spiritual care of souls in a mission in Pittsburgh diocese.

A. I don't think it would have any bearing whatever. He may have been in Rome as a traveler. I don't know under what pretense he was in Rome. But he may go to Rome as a suspended priest; then, most likely, if he were to apply for permission to say mass they would send him for a while into a convent to do penance, and after they had sufficient evidence of his worthiness they would allow him to say mass, but that would not change his status in Pittsburgh, because there is quite a great difference between being allowed to say a private mass and to hold the office of pastor.

Q. Can such permission under the laws of the Church in any way be considered as an adjudication by the ecclesiastical superiors of Bishop Tuigg?

A. It is not an adjudication of the question. No question is decided by any Court unless it is specifically submitted to it. Now the question therefore is, about the qualifications of the plaintiff in the case, having been submitted to the Archbishop or to the Court of Rome, and passed upon and decided in favor of the plaintiff, and until thus submitted and decided the Bishop is in no way bound to give him an appointment.

Q. What is the effect of the appointment by the Bishop of a priest to a mission without his possessing the essential qualifications required by the canon law?

A. According to many canonists if the defects are great the appointment would be altogether null and void, because no Bishop has a right to appoint a positively unfit and unworthy subject.

Q. And who is the judge of that unworthiness?

A. The Bishop is the judge of that.

Q. The Bishop is the judge of the qualifications?

A. Subject to appeal to the higher Court, the Archbishop, or the Propaganda in Rome.

Q. In the evidence of the plaintiff here certain writers of the canon law were quoted, will you please state if the page and chapters in these cases was given and if they support the allegations of the plaintiff?

A. I never read any quotation given. Just what surprised me : the only evidence given was on the last day, simply saying : "Here is the book ;" and "in this book they speak about the benefices and canon law." That is all.

Q. In your testimony you have given the page and chapter, &c.

A. Yes, sir. I have given one or two quotations, one from the Council of Baltimore, and one concerning the definition of benefice. And that is all I want. That will be enough.

Q. The plaintiff here testified that during all those years of travel and absence from the diocese he performed certain functions of the priesthood. I wish you would state if by his ordination and vow he was required to do so, and what that function is that all priests are required to discharge daily?

A. I cannot make it out, unless you mean the recitation of the Breviary.

Q. What is that?

A. That is a recitation of prayers to be said every day. It takes about an hour and a quarter every day.

Q. Is every priest bound to do that?

A. Not only every priest but every sub-deacon.

Q. Employed or not? A. Employed or not.

By the Court.—I would like to ask the witness a question. When a priest of the diocese applies to his Bishop for a mission, has the Bishop a right under the laws of the Catholic Church to refuse him work and make no provision for his support without giving the applicant the reasons for his refusal?

A. That depends ; now if he has reasons of public notoriety, the reason would be obvious, but if the reasons had come only to his knowledge by private information, he, in certain cases, may give the reasons, and in other cases he may not ; but at any rate if the Bishop should not give him the reason in person the Bishop could be compelled to give the reasons to his superior in the Supreme Court, there the Bishop could be obliged to show cause why he did not give an appointment.

By the Court.—The answer is not a direct answer to the question ; I will read it again ; when a priest of the diocese applies to his Bishop for a mission, has the Bishop a right, under the laws of the Catholic Church, to refuse to give him work, or make any provision for his support, without giving the applicant the reasons for his refusal ?

A. He has the right to decline to give him an office without giving him the reasons for it. That is the canon law. He is not bound to give the reasons to the priest, and if the priest appeal from that decision the Bishop is compelled to give the reason.

By Mr. M'Kenna.—Q. Is the Bishop required to give a trial, unless the aggrieved party asks for it ?

A. No man is compelled to give a trial, and no Bishop is bound to offer a trial or to give a trial, unless it is asked.

Q. In this case under consideration, if Father Sheehan had demanded a trial would it have been the duty of Bishop Tuigg to have given it ?

A. Now, to come to the point to which I wanted to call the attention of the Court, the case in question is not the case of a trial in the Bishop's Court, because the Bishop would at the same time be a party and defendant in his own case. It was evident that this was not a case to be brought into the Bishop's Court, and therefore in this case the proper way for the plaintiff to correct the wrong or to maintain the rights of which he claims he was deprived, would have been to bring his case before the Archbishop, and then the Bishop and the plaintiff would be both before their legal judge, and the case of each would have had all the privileges of any man, any litigant in court.

By the Court.—Q. Would it be a trial of the Bishop for improper conduct ?

A. Exactly, the Bishop might be called to account for malfeasance in office, just as a priest might.

By Mr. Watterson.—Q. It would not be the priest's trial?

A. The Priest would have a trial against the Bishop in the Ecclesiastical Court, and that happens very often, sir.

By Mr. M'Kenna.—Q. Is the Bishop obliged to give charity, or pension, unless it is asked?

A. The answer is merely a matter of course. I never heard of any man being obliged to give something when it is not asked.

By the Court.—Q. If I understood him, he says the Bishop has a right to refuse the priest a mission or employment without giving any reason for it, and that the only remedy a priest has in a case of that kind is to cite the Bishop for improper conduct.

A. That is for having refused rights, yes, sir, that is the point. The right of the plaintiff in the case is this, to cite the Bishop before the Court of the Archbishop to show cause why he should not give him an appointment.

By the Court.—Q. Then this is the first time that the accused priest would have any right to know what is the reason?

A. That is, he may know. The Bishop may have given him reasons, but it is not absolutely necessary. The Bishop is not obliged, in every case, to give reasons, but he may be compelled to give reasons in the higher courts; there he would have to justify his own course, and he cannot justify his own course without giving his reasons.

Q. Then, if I understand it, the priest who applies for work can be refused without any reason given for it, and his only remedy is to accuse the Bishop for mal-administration before the Archbishop, and the Bishop can defend there by proving the unfitness of the priest, and that is the only way the priest can find out what is against him? A. Yes, sir.

By Mr. M'Kenna.—Q. Just give the form of that trial, the case comes up by petition and answer?

A. He knows before the day of trial what time the trial will be and everything must be written.

Q. The way to introduce such a trial would be on the part of the plaintiff to complain of the Ordinary to the Archbishop and the bill of complaint handed to the Archbishop, charging that without sufficient reason, or without sufficient cause, the Bishop of this priest

has been guilty of refusing him an appointment, and then the case would be heard in court, and the Bishop would have to give reasons why he has refused to give him an appointment? A. Yes, sir.

Q. The Bishop also answers in writing, and the priest can see that writing?

A. Yes, sir; it is accessible. Then a day is appointed for the hearing before the Archbishop. I don't know how the matter is fashioned in this court. I have been in Europe employed as secretary for the Archbishop, and everything was on file and of course both parties had their pleas on file.

Q. From the testimony in this case, had the Bishop in your opinion power, according to the canon laws of the Church and the duty of his office, to withhold office and mission from Father Sheehan?

A. He had a right and a duty and to so continue, unless compelled by the decision of the higher authority to do otherwise. He proceeded canonically.

Q. I suppose this case, the case of Father Sheehan against Bishop Tuigg, instead of being in the civil court, would be in an ecclesiastical court, would that court in deciding the question of his right to office, also have power to award pecuniary damages for the loss of employment, if unlawfully refused?

A. I think there can be no doubt that that question belongs properly to the ecclesiastical court. The decision of this identical case as we have it here before us—suppose that three years ago Father Sheehan, instead of coming to this court to have his case decided, would have brought suit in the ecclesiastical court as to whether he was entitled to an appointment or not, and it would be decided by the Propaganda, that three years ago, when Bishop Tuigg refused to entertain the application made to him for the appointment, the Bishop acted unlawfully, his decision would be reversed, Father Sheehan appointed to office, and he would also have a perfect right to all the damage he suffered from the unjust refusal of appointment. I mean the damage of money for which he sues now in this court, \$2,400; I must connect that with the first question, to decide that he was entitled to office when he asked for office would also virtually decide the other question, that he has a right to the indemnity that he seeks now in this court. Now, this being so, the Bishop would have lost his case in the higher court, and from that

court he would have no appeal. Then the Bishop, like any decent Christian, like any honest man, would admit that, and according to moral theology he is bound to make good all the damage which, by his unjust action, he would have inflicted upon the plaintiff. And this would be done in most cases without having a new suit for compensation for money. Because we have a perfect code of moral theology in which there is a whole chapter about the obligation of any man, who by unjust acts has injured his neighbor, to make good every injury, not only the injury in his standing in the Church, but in money or worldly goods.

Q. In that connection, what would become of Bishop Tuigg, or any Bishop who would refuse to pay the money or restore the applicant to office after such decision in the higher court?

A. He would be probably deposed from his office.

Q. Degraded?

A. Degraded, simply excommunicated or degraded, but the case is not likely to happen anywhere. I never heard of any Bishop in modern times who would simply decline to submit to the decision given by a superior court of the Church; that is something entirely new and novel in the present age.

Cross-examination by Mr. Watterson.

Q. Suppose a case of that kind and you would take it to the various ecclesiastical courts, upon what would a priest live. Where would he derive his maintenance from—throw himself upon the Poor Board of his county?

A. First, you suppose that he is bound to go to Rome, or to be present in person. A. Yes, sir.

A. That is not necessary to do. He can stay at home.

Q. Suppose he stays at home. What is he going to live on for two or three years?

A. If he stays at home—it is altogether too big an exaggeration to speak about years—it may be at most five or six months, or perhaps only three months, especially if, in the petition, he would state that the case is urgent on account of the want of means of the priest, the case would be treated as an urgent case and it might not last three weeks, sir.

Q. Suppose a priest in good standing would tender his services and the Bishop would refuse to receive them, would he not have a right to support?

A. Now suppose a priest in good standing, then I should think that he would not only have a right to support, but he would get a mission. That is the only answer I can give. In the direct examination I have answered the question.

Q. Suppose a Bishop from malice or ill will would keep him out?

A. You have the remedy I have given or indicated in my direct examination.

Q. Supposing a priest in good standing is willing to render actual service and the Bishop will not permit him, what is his remedy?

A. To go to the court where I told you, and to bring his case before the authorities. There is no other remedy.

Q. Has he a right of support from the date of his tender of service to the Bishop?

A. No, sir. The support he would be entitled to in case the decision in the higher court would be in his favor; if the decision of the higher court is against him then it shows that he had no right to a title, no right to office, and no right to the emoluments.

Q. Suppose there is no question, that the priest is in good standing?

A. Who is to be the judge whether he is in good standing or not?

Q. It makes no difference about that. We suppose a case where the priest is in good standing, is acknowledged in good standing, acknowledged to be morally fit. A. Acknowledged by whom?

Q. Well, acknowledged by everybody, acknowledged by the Bishop and acknowledged by everybody?

A. If he is acknowledged to be in good standing by his Bishop, then his Bishop will give him an appointment, and there will be no reason for a lawsuit.

Q. Is the Bishop then bound to give such a man a mission?

A. He is bound to give him a mission, or when he has not a mission for him he is bound to support him.

Q. Does a priest in this country hold a congregation or mission in his own name? A. What is that "hold in his own name?"

Q. Does he retain? Does he own the congregation or the congregation own him—does he own the congregation—put it that way?

A. Evidently not. I suppose you won't claim that the congregation is a flock of sheep or cattle?

Q. In other words, does he govern the congregation in his own name?

A. Evidently, as long as he is in the office of pastor of a congregation he officiates in his congregation, I suppose, in his own name.

Q. Does he act in his own right or is he delegated by the Bishop?

A. He is there in the name of the Bishop. He is there as the representative of the Bishop.

Q. Is not a priest who is not suspended, and has jurisdiction in the diocese, in good standing?

A. What do you mean "he is not suspended?"

Q. How many ways can a priest be disqualified for service according to canon law?

A. A priest may be disqualified either by suspension or by irregularity. I suppose that is the answer.

Q. Are these the only means by which, the only manner by which, the priest can be disqualified according to canon law, by suspension and irregularity?

A. He may be by suspension and by irregularity, but then—

Q. By the canon law I mean.

A. I would put in another point. It is that there may be a suspension *de jure* and *de facto*.

Q. What is the difference between *de jure* and *de facto*?

A. Suspension *de jure* is a punishment from the court for a violation of the law, by which suspension he is suspended *ipso facto*. Then the Bishop, for reasons specified in law, may pronounce sentence against the priest in question. Then a priest may also be suspended *de facto* because he is out of office, or because he has, by public misdemeanor, so unfitted himself that no one will pay any attention to him any more.

Q. What cases are specified in canon law for suspension *de jure*?

A. *De jure*.

Q. Yes, sir. Will you be kind enough to name them?

A. Give me a book on canon law and I will name them. I would not trust my memory in all cases.

Q. Excepting in the cases given in canon law can it be incurred *de jure*?

A. If you intend by *de jure* only what we call in canon law suspension *latae sententiae*, I deny it. The greater part of these cases are inflicted *ferendae sententiae*, that is, by the positive sentence of the Bishop, and then to inflict the censure of suspension *ferendae sententiae* by the positive judgment of the Bishop, in the case of misdemeanor, whatever it be, be it scandal or anything else, this is a sufficient reason to suspend a priest, whether that case is expressed in law or not; and suspension *ferendae sententiae* may be incurred for any violation of public decency.

Q. Can a priest be suspended *de jure* except for those offences mentioned in canon law? A. For any act of malfeasance?

Q. *De jure*?

A. I have given my distinction. If you mean by *de jure* simply a case of *latae sententiae*, that is, when the law itself attaches the sentence of suspension for this or that forbidden act. If you mean that by *de jure*, then there is no other cause of suspension except the case specified in law.

Q. That is what I mean.

By the Court.—On the question as to what is the good standing of a priest I would ask you this question: If the Bishop refuses to give a priest a mission when asked for, without giving any reasons therefor, does that fact alone deprive the priest of good standing in the diocese?

A. The refusal of the Bishop to authorize a man to exercise the functions of the ministry would necessarily place a priest among those who are not in good standing, and then he would have the usual remedies in case he felt aggrieved.

Q. The point is as to what priest is in good standing where the Bishop refuses to give him a mission without giving him any reasons therefor? Does that fact alone—the Bishop's refusing to give him a mission—place him on the footing of not being in good standing in the diocese? A. Yes, your Honor.

Q. It does?

A. He would be looked upon as not being in good standing until the action of the Bishop would have been corrected by higher authority.

By Plaintiff's Counsel.—Is not a priest in good standing who has not been suspended, and who is not irregular, according to canon law?

A. A priest is in good standing when he is not suspended—when he is not irregular. But let me add whether he be not suspended or whether he be not irregular is the question always submitted to the Bishop. It is the Bishop who can say whether the priest is suspended or not.

By Mr. McKenna.—He decides the standing?

A. He decides the standing. It is the Bishop's right to decide a priest's standing in the diocese. There is no reason for having a Bishop if he has not that right.

By Plaintiff's Counsel.—Suppose there is no question about his having been suspended or declared irregular, is he then in good standing?

A. Canonically? Simply because he does not exercise any office? I don't know what you mean.

Q. We are not speaking of the vested right of the Church, or anything of the kind; I simply asked this question: If a priest has not been suspended by his Bishop or otherwise, or if he has not been declared irregular, is he not then in good standing?

A. You say, who has not been declared irregular; you suppose it is necessary for a priest to be declared irregular in order to be irregular; that is not true, it is not canonical. Then I say "good standing," as understood, is this, a priest is not in good standing when he is in rebellion against his Bishop.

By the Court.—Suppose he takes an appeal from the decision of the Bishop or complains to the Archbishop, is the priest in good standing then?

A. His good standing will depend on the sentence he gets in the higher court. But as long as he is in rebellion against his Bishop, in litigation against his Bishop, he is not in good standing until the action of the Bishop has been reversed in the higher court.

By Mr. Watterson.—Q. Now, is an appeal to the Archbishop rebellion against the Bishop? A. No, sir.

Q. Then he is in good standing?

A. No, sir; he is in rebellion as long as he is in litigation against his Bishop, but from the fact that he is in rebellion you can-

not infer that he has not a right to appeal. But he is supposed to be in rebellion against his Bishop as long as he is in litigation with his Bishop, and until he has carried his point in a higher court, or, in other words, until his rights have been maintained in the higher court against the Bishop he is in rebellion.

Q. In other words, he is supposed, in the meanwhile, to be in rebellion? A. Not only supposed, but he is.

Q. Because he is not in rebellion on account of his appealing, is he not in good standing? A. No, sir; most decidedly not.

Q. Does he lose his good standing by appeal?

A. I have answered your question; he does not lose his good standing by appeal; he loses his good standing by the litigation, by disobedience; then when he comes to a higher court his standing must be determined by the sentence. If the Bishop's action against the priest is sustained in the higher court he will be twice in bad standing. He is first in bad standing because he is in litigation with the Bishop, and he will be in bad standing secondly because he will be in bad standing with the Archbishop.

Q. If a priest is in good standing, is he not always supposed to be in good standing until the contrary is proved. A. Yes, sir.

Q. Does the mere fact that he has not a congregation make him in bad standing?

A. No, sir. Standing depends upon whether he has any contention with the Bishop.

Q. Then it is merely a personal matter?

A. No, it is a matter between an inferior and superior. You might have another person than Bishop Tuigg, and I suppose the standing of the defendant would not change a bit.

Q. Is not every person having jurisdiction presumed to be in good standing?

A. What jurisdiction?

Q. Having the jurisdiction to say Mass, all the ordinary jurisdiction which a priest has in a diocese.

A. What do you mean by jurisdiction? Do you mean the faculty of saying Mass?

Q. Yes, sir, and —

A. Well, sir, this is new. Jurisdiction does not apply to saying Mass at all.

Q. I say now, hearing confessions, administering sacraments, &c.

A. Now, only a priest who has that right recognized by the Bishop is in good standing, but the case may arise, and it has arisen, in which a priest, even suspended, and though he had no right whatever, continued to say Mass, and, by doing that act, not only was suspended, but irregular. The Bishop cannot, by main force, prevent a man from saying Mass, but he might, by a sentence he passes upon him, prevent him from saying Mass licitly. To say Mass licitly would suppose that a priest is in good standing; but the question is always whether the man who performs the functions spoken of does it with the consent of the Bishop. If he does it against the assent of the Bishop he is a criminal.

Q. Is not a priest in good standing who has the right of saying Mass, and jurisdiction to administer the sacraments, and who has not been either justly or unjustly suspended by his Bishop?

A. Sir? The question has just been answered before. I will answer it again; the question is, whether a priest who lawfully says Mass in the diocese and performs the other functions in the diocese is in good standing or not.

Q. And who has not been suspended at all?

A. I would simply give an unqualified "yes" in answer to the question.

Q. Who is not under the sentence of suspension at all, in any respect *ex informata conscientia*, or in any other way—is he in good standing—that is an honest, fair question?

A. He is in good standing if he so officiate and is not suspended.

Q. Do the laws of the Catholic Church presume a priest unworthy before proof of it, and before a hearing of his case is had, when he is once in good standing?

A. The laws of the Church never presume anything. The laws of the Church have always to be applied to facts, therefore I say, as an answer to the question, a priest remains in good standing until by facts he has gone into bad standing. That is all.

Q. Until he is sentenced to be unworthy?

A. There is no sentence. I don't maintain that a sentence is necessary to put a priest in bad standing; I don't want my answer to be construed that way; I say a priest may be in bad standing, either by a sentence against him, or by a question of fact.

Q. Suppose a priest would on Saturday be in good standing, but would slander a man on Sunday, and officiate, would he still be in good standing?

A. Slander? What is that? Speaking unjustly, wrongfully?

Q. That is what I mean by slander.

By the Court.—Suppose he commits a wrong, sinful act, on Saturday and he officiates on Sunday?

A. Now the sinful act, it may be one of those crimes to which the censure of suspension, *ipso facto*, is attached, then he would have no right to say Mass on Sunday.

Q. The question is as to what deprives a priest of his good standing in the Church, and the question was, suppose the priest should do something wrong on Saturday, and he exercises his priestly functions on Sunday, is he deprived?

By Mr. Watterson.—Suppose he should commit what you and I believe to be mortal sin?

A. Mortal sin, it may be internal, if so—

Q. Suppose it be external?

A. You must always take into consideration that an external action is required to make standing in this world; then it comes to the distinction that I was going to make, and the distinction was, that this act may be a criminal act, for which there is suspension *ipso facto*, but there is another act to which may be attached *ferendae sententiae*. In the last case, the priest may be suspended by the Bishop, as soon as the Bishop knows that act has been committed.

Q. In the meanwhile, between the time he commits this action and the time that the Bishop finds it out, he is then in good standing?

A. He may be in good standing before the people who do not know anything about it, but I maintain if there is scandal given by the act, he is already, I would say, in an incipient state of bad standing, and then the state of bad standing is positively bad, or becomes positively bad, when he is suspended by the positive act of his Bishop. But he may be in an incipient state of bad standing before he is positively suspended by his Bishop.

Q. He may be a hypocrite, then?

A. May be as the case stands.

Q. Do the personal dislikes of the Bishop disqualify a priest for a mission?

A. I think the question is simply impertinence.

Q. I don't think it is in this case.

A. I don't know about that.

By Mr. Watterson to the Court—The question is a proper question for cross-examination, your honor.

By the Court.—I don't think it needs to be answered.

By the Witness.—I answer simply no. I maintain that a personal dislike is never admitted as being the cause of a suspension.

Q. Doctor, can a Bishop under the pretence of the greater glory of God and the greater edification of the faithful and the good order of the diocese, judge against contrary exemptions and exceptions?

A. I decline to answer until it is made out what the counsel on the part of the plaintiff understands by contrary exceptions.

Q. Doctor, take that please and see if this is a correct translation? (Book handed to witness.)

By the Court.—I don't see what that question means, except this, can a Bishop under the pretence of doing right do what is wrong.

By Mr. Watterson to the Court.—What the law declares to be wrong.

By the Witness.—I maintain here that the Bishop is bound by canon law.

Q. Is he bound to know canon law—if he does not know canon law?

A. The question is not before the Court. He is presumed to know canon law because he is not only a member of the Church but a high officer of the Church; ignorance of the canon law cannot be supposed in the Bishop.

Q. Cannot be supposed?

A. No, sir; nor can you suppose that he will lawfully transgress the canon law. It has all to be proven, because it implies a crime.

Q. Suppose a case of this kind. Suppose a priest has charge of a congregation, and he resigns his congregation, and his Bishop accepts his resignation and gives him permission to leave his diocese, and renew the permission from time to time, on his return accepts him back into the diocese, and promises to give him a mission when

there is an opening ; and suppose at the same time that the diocese be divided and the last mission to which that priest had been assigned was in the newly formed diocese, to which diocese would that priest belong ?

Objected to as not cross-examination.

Q. What rights does a priest acquire when he is ordained ?

A. What do you mean by rights ; do you mean rights to fill certain offices or rights temporal, rights to support ?

A. That is what I mean. What is his right as to support ?

A. He has a right to his temporal support in consideration of the service he renders to the Church.

Q. What rights though does he acquire at ordination. Does he not get his right of support before ordination to the priesthood ?

A. The right of support as it is understood in your question, or must at least be understood in your question, is this, you, mean that on the day he is ordained sub-deacon.

Q. That is what I mean exactly.

A. He must have a title, that is he gets at that time the title of mission, and from that time on he belongs to the diocese.

Q. What does that title—

A. Please allow me ; and acquires the right to support. Now, it is well known that that right of support, to which a sub-deacon is entitled, means simply this, that he has free board until he gets higher. I never heard of a sub-deacon in the Catholic Church having any other claim but his bread and butter until he is ordained a priest.

Q. And clothing ?

A. And clothing, and in a good many seminaries they have not that right.

Q. By canon law ?

A. By canon law they have no other right, therefore a sub-deacon has a right to his board until he is ordained and while sub-deacon. Now, in this country, generally, the question is not of much account, because there is scarcely more than a space of three or four days between the ordination of sub-deaconship and of the priesthood, but in Europe, where the case might be otherwise. For instance, I was ordained in Europe and I was two years and a half sub-deacon before being a priest. The law regulates that from the day of ordination the sub-deacon has a right to support, then we

come to this point. The sub-deacon, while sub-deacon, is just in the same condition as any member of the hierarchy ; that is he is bound to live according to the canons of the Church. By misdemeanor he may lose the right to support.

By Plaintiff's Counsel.—Yes, we admit all that.

By Mr. Watterson.—Do the same laws that govern benefices govern congregations in this country ?

A. That is, are the rights, are the temporal rights in this country the same as those in Europe where there are benefices ?

Q. Either temporal or spiritual ?

A. The spiritual rights are the same all over the world for parish priests. I suppose there is no explanation needed for that.

Q. Now, the temporal rights ?

A. The temporal rights. That is the right to live from the benefice or from the office a priest holds in the Church ; now, those are in substance the same, one point excepted, and that point is in their immobility which is peculiar only to those countries in which there are benefices ; as in this country there are no benefice whatever, the office of missionary in the parish in this country is not a perpetual office ; it is given by the Bishop and can be taken away by the Bishop.

Q. In other words, the priest is removable ?

A. Removable *ad nutum*.

Q. In other words the same laws do not govern ?

A. The same laws do not govern on account of this difference. In Europe the priest is a regular parish priest and regularly installed and cannot be removed without a sentence for a crime. Then in this country a priest can be removed from his parish validly by the Bishop, by the mere act of the Bishop without any reason whatever. His hold of office depends entirely on the will of the Bishop.

Q. Can the Bishop canonically remove him without giving him any other position as long as he is in good standing ?

A. The Bishop cannot remove him from his position without giving him another one, if the Bishop has no reason, but when the Bishop has a reason he can remove without giving a new appointment. It is left to his own discretion to say whether he has reason or not, and this is right.

Q. If he is in good standing he is bound to give him another mission ?

A. Provided the priest applies for one. If the priest says he would not be anxious to get one—.

Q. No, no. Suppose the priest applies for another one?

A. Then he should have one.

Q. Should have one? A. Yes, sir.

Q. And if the Bishop refuses to give him one?

A. Then the priest could go to a higher court.

Q. Would the Bishop be acting unjustly?

A. If the Bishop would be doing an unjust act he would not only be compelled by the higher court to give the benefice, but he would also have to make good all the damage which the priest might have suffered either in his reputation or in his material goods.

Q. A priest, then, who has been removed from one parish, and is in good standing, has a right to another parish?

A. He has a right to another parish when he is in good standing, but in case there be no vacant parish he can be employed somewhere else, and he would then be one of those who are entitled to some support from what they call, generally, the "Infirm Priests' Fund," because he is supposed to be in good standing.

Q. Will you kindly tell me the difference between the Penal and Criminal Courts in the Catholic Church. Tell me the difference?

A. I didn't speak of a Court at all, but of a Code.

After Recess.

DR. HECHT recalled and cross-examination continued.

Q. Supposing a Bishop would order a priest to do anything contrary to the canon law, which should he do, obey the Bishop or the canon law?

A. Now the Bishop, when he orders the priest to do anything, is supposed to order according to the canon law, and until the contrary is established, and according to the general principle in moral theology and canon law, the presumption is on the side of the superior until the contrary is established.

Q. Now suppose that a priest will show to his Bishop that such an order as made to the priest was contrary to the canon law—

Objected to by counsel for defendant.

Q. Supposing a Bishop offer a priest a mission which was incompetent to support him, would the priest be bound to accept it?

A. He would be bound to accept it and then he might in regular course of law compel the Bishop to add what is needed as support beyond the income of the mission.

Q. To add the deficit ?

A. That is it. To make up the deficit of his support.

Q. Doctor, I would just like to show you this and further tell me if that is law : "In all canon law, when the Bishop orders something which is contrary to the custom of the Church, the law is to be obeyed and not the Bishop." Is that the law of the Catholic Church ?

A. This, sir, is the common law, but the question connected with this point is this, who is going to judge whether the orders given by the Bishop are contrary to canon law.

Q. Supposing the common law is very evident, in that case is he to obey ?

A. There is no evidence. Every evidence of the law may be controverted in the case you propose. The question is, on one side the Bishop understands the common law in his way, and the priest, who is to obey in the case, understands the common law in a contrary sense. Now I submit the controversy is to be settled by somebody, and it can be by both priest and Bishop going to a higher court.

Q. In a mixed case, in speaking of appeals, has a priest a right to appeal to an ecclesiastical court or to a civil court canonically ?

A. What do you mean by a mixed case ?

Q. A case where there are both ecclesiastical law and civil matters concerned.

A. He may have a right. This question is not conceded by the canonists in general, that a mixed case can by any means be brought canonically into a civil court, but at any rate that part of a mixed case which is strictly ecclesiastical must go by all means into the ecclesiastical court, and the part which is strictly temporal, because it belongs to a mixed case, belongs also, in the first instance and primarily, to the ecclesiastical court because the two cases cannot be separated. In order to settle a mixed case it is absolutely necessary to settle it upon its own merits, to go to an ecclesiastical court because the civil court, having evidently no rights on that part which is ecclesiastical, would be compelled simply to try one part or one side only, that is partially. I never heard that a case can

be settled in a court *ex parte*, that is, only one part of the case and the rest sent elsewhere.

Q. Dr. Smith, here, lays down a certain proposition and I wish you would tell me whether it is good law or not. The question as it is in the book, "Can priests in the United States have recourse to civil courts against alleged acts of injustice inflicted on them by Bishops." The answer is, according to Dr. Smith, that they cannot in matters strictly ecclesiastical, as it is evident from this decree, which translated means this [Here the witness translated the decree as follows]: The witness—"If, therefore, any ecclesiastical or religious person of either sex should cite another ecclesiastic or religious person to civil tribunal upon a case that belongs strictly to ecclesiastical law, they must know that by doing that they incur the censures inflicted for this offense by the law." This is the translation, do you object?

By Mr. Watterson.—No. That is correct.

Here the witness continues as follows: "The censure incurred also in the United States for carrying purely ecclesiastical matters to the civil tribunal is excommunication, *latae sententia*—that is by the very fact—reserved in a special manner to the Supreme Pontiff—that is to the Pope." Now I beg to read to the end of the chapter—there are only four lines—to show in what sense the author has written his remarks on this point: "Happily appeals of this kind are of rare occurrence in these parts, and where priests, unmindful of the laws of the Church, have appealed to civil courts against alleged injuries these courts have generally recognized and accepted the laws of the Church on this head."

Q. Doctor, I ask you if that note under that is also—

A. There is a note attached: "Hence in mixed cases where the persons are ecclesiastic, but where the object of the case in question, or things in controversy, is a temporal matter, those persons do not incur any censure. This is held specially in non-Catholic countries, where redress cannot be obtained outside of the civil tribunals." Do you wish me to say this country?

Q. Please give the quotation from where that is taken?

A. It is taken from the Council of Baltimore of 1849.

By Mr. McKenna.—Is it a quotation at all, or is that the writer's own comments? The question I asked you was, whether the words were given as a quotation?

A. No, not the words, but the doctrine is given as the doctrine contained in the Instruction of the Propaganda concerning the Baltimore Provincial Council of 1829 and '49. Now, do you want me to give my opinion of the value or merit of this?

By Mr. Watterson.—No, I just asked you if that is good law?

A. I want to show you just exactly how far I consider it as good law. The point in question is whether the persons who bring a mixed case into a civil court incur, *ipso facto*, the sentence of excommunication or not? If the case is mixed they do not incur excommunication. But it don't show they had a right to bring it into a civil court.

Re-direct by Mr. McKenna.

Q. Doctor, you said this morning, in answer to questions of Mr. Watterson, that a priest who was not suspended was supposed to be in good standing. Do you mean by that because he was not suspended he possessed all the qualifications and credentials for an appointment to a mission?

A. By no means. He has only the negative qualifications, but he has not by that the positive qualifications by which he would be fit.

Q. If by good standing in the Church you mean possession of all the qualifications required for an appointment, do you hold that the law says only suspensions and irregularities militate against the good standing of a priest?

A. By no means. A priest must be in good standing both concerning the negative and the positive qualifications—that is, he must neither be suspended nor irregular, and besides that there is another proof to be given about the positive fitness, and that positive fitness is to be taken from the canons concerning the positive virtues required. It requires, as it has been stated time and time again, the canonical age, required science and purity of morals.

Q. Now this term of good standing: Is any official action of the Bishop required by the law of the Church as a means to deprive a priest of his morality or standing?

A. The only way a priest may lose his good standing is by his own act. So that good standing means that a priest is, according to the judgment of his Bishops not only a man who has incurred neither a suspension nor an irregularity, but who, moreover, is by

his learning and his virtue a fit subject to be entrusted with the care of souls.

Q. Well, Doctor, the other statement you made concerning the salary, the support and maintenance of the Church depends entirely upon the rendition of the services?

A. I maintain, and this law especially applies to this country, that salary is due in justice for a service rendered. It is true the word salary does not really fit the case, because to say that the man preaches the gospel for a salary is not quite correct; nevertheless in common parlance it is used. It is admitted as a remuneration due in justice to the man who performs the functions of the sacred ministry in the Church.

Q. And, if he do not exercise the functions, you claim he is not entitled to the salary?

A. He is not entitled to the salary. He may be entitled to support in the way of charity, as has been explained. I simply refer to my direct evidence of yesterday as proof that the provision made by the Second Plenary Council of Baltimore specifies that all support given to priests out of a mission is merely a charity and not a salary.

Q. You used the term pension this morning?

A. I may have used the word pension. I spoke of it as pension in a common law, but not in the United States. That is my explanation of the case. I didn't speak of a pension to which a priest is entitled according to the law of the United States; no such thing exists, in some countries there may be a pension by which a priest is put on the retired list, then he gets what the law stipulates, but no such thing as a pension exists in the United States.

Q. Now, Doctor, in canon law, this case we have under consideration here, state whether or not it is a mixed case, as the phrase has been used here?

A. As the phrase has been used here this is evidently, in canon law, a mixed case, for this reason: The chief point at issue is whether Father Sheehan was entitled to a mission, and this point is strictly ecclesiastical; now it may be called a mixed case on account of the money matter involved in it, and strictly speaking, I maintain that this case cannot be, in justice, decided in this Court, for the very reason that the plaintiff in the case, in order to be entitled

to the money he claims, must show that he has won his case in the Ecclesiastical Court, that according to the canons of the Church he was entitled to the office for which he, in this Court, claims a salary; he claims that this Court should decide that he is entitled to \$2,400 for services which he never rendered in the Church, which he claims to have proven. Now, I say the question of his right to this \$2,400, in order to be decided, presupposes a former decision, given according to the canons of the Church, that he has been unjustly deprived of his office, and until that question is settled, even should the case be decided in this Court in his favor, it would not yet give him, in conscience, a right to the money, because the money is supposed to be given him on account of services which he has not rendered.

By Mr. Watterson.—Don't that portion of the paragraph of the Second Plenary Council of Baltimore. referred to by you, regulate the provision for sick priests?

A. I beg your pardon; the last paragraph of that regulation, which I have read in full, speaks explicitly of unworthy priests and priests who have opposed the legitimate authority of their bishops.

Q. Suppose, however, the priests are worthy?

A. Who is going to decide whether the priest is worthy?

By the Court.—If I understand your position, it is that a priest is not entitled to any salary unless he has work, charge of a mission. Is he entitled to any support?

A. In charity, yes; in justice, no.

Q. If he is entitled to support in charity, who is to see that he receives it?

A. The whole answer to the question proposed by your Honor is contained in the very words in that portion of the paragraph of the Second Plenary Council of Baltimore in the evidence which I submitted concerning this point yesterday. The Bishop should see that the faithful people of the diocese should contribute by collections in a warrantable way towards the support of such priests.

Q. Through whose hands would the money pass?

A. Generally it would pass through the hands of the Bishop himself, or through the Chancellor of the diocese.

Q. The Chancellor appointed by the Bishop?

A. By the Bishop.

By Mr. Watterson.—"A person who has rendered no service is entitled to no pay." Now do you mean by that, in the instructions with regard to the title of mission in this country—do you mean to translate the words there [book shown to witness] "*Qui sese devovent?*"

A. That is a man who devotes himself. I don't know whether a man who devotes himself can devote himself without work.

Q. Suppose he is willing?

A. The will is not enough—the will simply. I might say I am ready to work, but suppose I am not fit to work. Then, because I am willing to work, is, therefore, a Bishop bound to employ me? It is one thing to be willing to work and another thing to be fit to work.

Q. Suppose a man is fit?

A. Who is to judge whether he is fit? The Bishop. The man has no other redress if he is not fit than to go higher to reverse the judgment of Bishops.

Q. Is not the contract complete between the diocese and the priest when the vow is made?

A. It is a conditional contract that the Church, on her side, promises to the priest work and bread in the diocese as long as he lives within the diocese such a life as to enable him to be of service to the Church. If, by misconduct, he renders himself unable to render service in the Church, by doing so he loses his right to work, and, therefore, also to support.

By Mr. Reardon.—And the Bishop is the judge of it?

A. Yes, sir.

REV. FATHER WALL sworn on behalf of the defendants, and examined by Mr. McKenna.

Q. Father Wall, I suppose you succeeded the late Dr. Kehoe, president of St. Michael's Seminary, at Glenwood?

A. Yes, sir.

Q. How long ago? A. I think it was 15 or 16 years ago.

Q. How long were you president of that institution?

A. About 11 years.

Q. Father Wall, we will not ask from you, as we did from some of the experts from Cleveland, a general recital of the points

raised by this question of canon law. I merely want to ask you this question : On whom is the burden of proof cast when an applicant applies for appointment to a mission, as to possessing the three required qualifications ?

A. Do you mean a strange priest coming into the diocese ?

Q. A man out of employment four or five years ?

A. If he can give proof that during his absence he was exercising the ministry in another diocese, all is right ; but in case he has not permission to be absent from duty, or that permission is doubtful, and no one knows where he has been during the years of his absence, the priest must prove that during that time he conducted himself as a priest in the exercise of the ministry.

Q. How is that proof supplied ?

A. That proof is ordinarily supplied by letters *dimissorial* from the Bishop under whom he exercises the ministry, or the Vicar-General ; and, I should think, in no case would any other proof be sufficient if the proof of the Bishop or the person who governs the diocese can be had.

Q. Then the mere fact of one's occupying a mission in itself does not dispense with the production of these testimonials from the priest applying for a mission to the Bishop after being absent out of the diocese for a number of years ?

A. Oh, no. If there is a doubt as to where he has been or how he has conducted himself the burden of proof lies on him. He must show what he has been doing. That is the common sense view of the case.

Q. In reference now, Father Wall, to the good standing of a priest, I desire to ask you this question. Suppose a priest has been absent for several years from the diocese and returns without any letters from the Bishop, certifying to his conduct, or to his exercising the ministry in any other diocese, what would be that priest's standing ? A. Very dubious.

Q. Then these letters and credentials would be a method of establishing that he was in good standing in applying for further appointment ?

A. It would, sir, in fact the only way to do it.

Q. You heard the testimony, I presume, or partially, that was given by Dr. Quigley and Dr. Hecht here ? A. Some of it.

Q. From your knowledge of the canon law do you subscribe to their doctrines? A. They were correct so far as I heard.

Cross-examination by Mr. Watterson:

Suppose a priest were absent by leave of his Bishop for four or five years, and he would return and render an account to that Bishop, and be accepted by him, would he have then to produce any further evidence?

A. Certainly; if the Bishop accepts him it is all right.

Q. If the Bishop accepts him it is all right?

A. When he comes back, if the Bishop accepts him, it is all right, but the Bishop is supposed to act in a rational manner.

Q. In such a case as I have just supposed, would not that priest be in good standing. If the priest who is absent four or five years would come home and render a proper account, would he not be in good standing? A. Of course he could be.

Q. He would be, would he?

A. Oh, that's another thing; he may or may not be.

Q. My supposition is that he is accepted by his Bishop?

A. The presumption is that all is right then.

Q. Supposing that shortly afterwards another Bishop would take charge of the diocese, would that priest have to present testimonials to the new Bishop?

A. He originally belonged to the Bishop and was away for a specified length of time and then received by his own Bishop?

Q. Received by his own Bishop and the succeeding Bishop would want to call in question his conduct during his absence.

A. In case he finds out that he has any reasons, he could do it. Thinking, for instance, his predecessor might have received the man without suspecting anything wrong, or without having heard any rumors, and the incoming Bishop or the administrator of the diocese might have heard some rumors that would justify it, he would be obliged to enquire into the character of the person during his absence, and it would be his duty to do so.

Q. What time does a Bishop's jurisdiction begin?

A. The moment he receives the bulls.

Q. Has he not authority before he receives the bulls?

A. I think not, I think that is the received opinion.

DR. P. F. QUIGLEY recalled and examined by Mr. Barton.

Q. I want to ask you a question. In the report of O'Hara versus Stack, 90th Norris, 488, in the printed argument of the counsel of the appellee, I find this: "Mere priests have no right of direct recourse to the Pope. Bouvier, Inst. Theology, vol I., pages 446 and 447. If they have recourse, it is only *ex gratia*." Now, I wish you would state whether that is a correct quotation from Bouvier's Theology or not?

A. I think it is not a quotation at all. I look upon it as a statement that in vol. 1st of a book known as *Institutiones Theologicae*, Bouvier, there is contained on pages 446 and 447 the doctrine that in the Catholic Church mere priests have no right to have immediate recourse—or to make an appeal—to the Pope. Here is the book in question. There is no such doctrine taught in the book. In fact, in the part referred to, there is no question of appeals whatever; but there is a question of what is known to historians and theologians as to the *Declaration of the Gallican Clergy*—which has been condemned. In the passage referred to there is no question of the doctrine on appeals as taught in the Church.

By Mr. McKenna.—I asked Dr. Hecht a question that I intend to ask you also. On the denial of an appointment of an applicant for a mission on the ground that his former or last parish had been cut off by a division, and that he was no longer entitled to receive or apply for a mission from the new Bishop of his old diocese, would that be a subject of appeal or redress in the tribunals of the Church?

A. Yes, sir.

Q. Waiving all questions of his moral qualifications for the office, you say that there is ample remedy? A. Yes, sir.

By the Court.—What is the remedy in a case of that kind?

A. In case one is denied a position on the claim that he does not now belong to the diocese of the Bishop to whom he makes application, the remedy is an appeal, and the object of the appeal is to have it decided whether or not he belongs to the diocese in question.

Q. Is the remedy an appeal, technically so called, to the Archbishop?

A. If a lawsuit be instituted and the Bishop be cited before the Court to show cause why he does not belong to the diocese, there

would not be, in the strict sense, an appeal, but in the large sense there would be an appeal.

Q. Not technically what is known as an appeal? A. No, sir.

By Mr. McKenna.—It is a complaint made before the Archbishop, and he cites the Bishop before him?

A. I intended to say that the Archbishop will not receive a *complaint*, but he has power to receive a lawsuit, and to sit in judgment on the lawsuit.

Q. Ain't that a complaint?

A. It is not what is known here as a complaint.

Q. Would he not complain of the Bishop?

A. He complains of him in the form of a trial.

Q. He first complains to the Archbishop by petition, setting forth the facts of the case, and complains of the conduct of the Bishop, and then he calls upon him to remedy it. Is that it?

A. Yes, sir; you may call it complaint in your legal sense. But, aside from this, there does lie a canonical appeal to the Archbishop, according to the exceptions in law even for a case of this kind.

By the Court.—Suppose the Archbishop refuses to hear the application, what is the remedy then?

A. An appeal to the Archbishop's superior, the Propaganda.

DR. HECHT recalled and examined by Mr. Reardon.

Q. Doctor, I wish you would look at the signature to that letter [letter handed to witness] and state whether you recognize it?

A. It is the signature of Cardinal Franchi and I have seen such signatures about 25 or 50 times in my lifetime. I know his handwriting. I know moreover the signature of Agnozzi, who was Secretary of the Propaganda, and who therefore signed the letter as Secretary. [Another letter shown witness.] The other letter is Joannes Cardinal Simeoni. I have seen that signature about eight times in my life.

Q. You believe that to be his signature? A. Yes, sir.

RT. REV. JOHN TUIGG recalled and examined by Mr. McKenna. [Letter shown to witness.]

Q. I wish you would state how you received those letters?

A. I received them from the Prefects of the Propaganda. They were addressed to me personally.

By the Court.—And come in the regular course of mail?

A. They came to me in the regular course of the mail

Q. Postmarked where?

A. Rome, New York and Pittsburgh.

Q. You received them as official communications, mailed to you by your superiors in Rome? A. Yes, sir.

By Mr. Reardon.—We offer the letters.

Counsel for plaintiff object to the letters under the evidence, and furthermore object to the letters unless offered as a whole.

[Here one of the letters was marked Exhibit A, April 29, 1881.]

Counsel for plaintiff accept that [referring to a translation marked for identification by the reporter April 29, 1881,] substantially as the translation of the letters marked Exhibit A, April 29, 1881.

By the Court.—Admitted for the present.

By Mr. Barton.—I wish you would state whether or not when you refused to presently assign Father Sheehan to a mission, and directed his retirement to a monastery, as stated by you, you had, within your knowledge and possession, evidence that during Father Sheehan's absence from the diocese his course of life had not been regular?

Objected to by counsel for plaintiff.

By the Court.—Admitted under objection.

A. I had such evidence.

By Plaintiff's Counsel.—We still object to the testimony being received, but at the same time I would like to ask the gentleman a question. When was this tender made to the plaintiff. I want to know when he was asked to go to a monastery?

A. I didn't ask him to go. I gave him his choice of going there or being refused a mission.

Q. What was the date of that?

A. That was the first interview. There is some dispute about the date—sometime in 1876.

Q. Will you state where the interview was? A. In my house.

Q. Did you offer to pay for the plaintiff's support in a monastery at that time?

A. That very moment he refused to go. So there was no question of payment.

Q. If he had gone would you have paid?

A. He refused to go at all whether I paid the expenses or not.

Q. He said that? A. He told me he would not go.

By the Court.—Without getting at the facts simply, did you inform him of what you had heard in reference to him?

A. No, sir; I do not recollect that I did.

Q. I would like to ask another question in connection with the other. Did you give Father Sheehan any reasons why he ought to go to a monastery?

A. I think I did, your Honor. So far as I can recollect I think I told him he had been so long without a mission that he must have gotten out of order somewhat, and that he ought to retire to a monastery for a time, and, if he proved himself worthy, I would consider his case, provided he retired for one year. In connection with this I wish to state, formally, the fact that I had no animosity or ill will against him then, nor do I bear him any even now. I gave him every opportunity consistent with my power to recover himself. I wish to say this on account of that which has been insinuated here. [Here a paper marked Exhibit "B," a translation of one of the letters offered in evidence, was admitted by the plaintiff to be exactly correct.]

By Mr. Watterson.—Have you any other correspondence from Rome than these two letters in regard to Father Sheehan?

A. You mean officially?

Q. From the Cardinal Prefect?

A. None from the Propaganda bearing directly on this case, so far as I now recollect.

Q. Bearing on Father Sheehan, you received no letters from the Secretary besides these two?

A. No letter except these.

Q. Did you receive one in September, '79?

A. No; but it might be that this case was mentioned incidentally in another letter written me on other business.

Q. Was his name mentioned in any other correspondence from the Propaganda?

A. It is hard to say that now, definitely, Mr. Watterson. I would have to refer to all the letters I received from the Propaganda before I could say definitely.

Q. Would you kindly look and see if there is, during the year 1879, any such mention? A. I will.

Adjourned.

FOURTH DAY.

Counsel for plaintiff renew their objection to the admission of the translation of the letters offered by the defendant, and marked by the reporter as Exhibit A and Exhibit B, April 29th, 1881, for identification, as being beyond the terms of submission, and further, that they were not offered in their entirety.

It is mutually agreed by the plaintiff and defendant that copies of the two letters of the defendant, in the original Latin, together with a translation of the same by each party, should be admitted in evidence.

Defendant rests.

And now, to wit, Monday, May 2, 1881, the above entitled cause proceeds before the Hon. J. W. F. White, pursuant to the article of submission.

Counsel for plaintiff requests from the defendant a certified copy of the letters, referring to the plaintiff in this suit, received by Bishop Tuigg from Cardinal Simeoni and Cardinal Franchi, and it is agreed that the defendants submit a copy of the letters in the original Latin, together with a translation, by each side, of the same to the court.

FATHER NOLAN recalled on behalf of the plaintiff and examined by Mr. Watterson.

Q. Father Nolan, I wish you would please state what rights a priest has when he is ordained with the title of Mission.

Objected to by counsel for defendant

By Counsel for Plaintiff.—I expect to follow that up by rebutting their testimony on that point.

By the Court.—Admitted.

Q. The witnesses called for the defense, Father Nolan, testified that the Bishop is the judge of this matter of the disqualification. Now can a Bishop refuse a minister or a priest in good standing maintenance if he asks for it?

A. He cannot refuse a priest. The Bishop cannot refuse an ordained priest under the title of Mission, honestly, a competent support.

Q. So long as he is in good standing?

A. So long as he is in good standing.

Q. Now if a priest has jurisdiction and is not suspended, is he in good standing? A. Yes, sir.

Q. Can a Bishop refuse such a priest support?

A. He cannot.

Q. Now will you be kind enough to cite us to the authorities?

A. I will cite you. The very title of Mission under which he is ordained, and the title of Mission calls his business an office, and until he shall have laid aside that office or shall have been dismissed from it, he is by the very title entitled to his support. The title of Mission is its authority issued by the Propaganda in Rome.

Q. What book is that you have in your hand, Father Nolan?

A. This is A. Koning's Compendium of Moral Theology.

Q. Is that an authority?

A. Yes, sir; it is an authority.

Q. Will you take that book, and on page 214, tell me if this is a correct translation: "The title of Mission is usually granted for those who dedicate themselves to the apostolic missions in those countries in which the condition is such that the common law of the Church with regard to these matters which relate to the title pre-required for holy orders cannot be observed to the letter. They who are ordained with this kind of title obtain their necessary support from the apostolic ministry in the mission to which they have been ascribed."

A. Yes, sir; that is a correct translation.

Q. Now when is that title given?

A. From the Pope, directly from the Propaganda, from the Cardinal of Rome.

Q. On the same page, 213, see if this is a correct translation: "A title is of two kinds, viz.: Patrimonial and Ecclesiastical. That of patrimony is that the person to be ordained has a certain stable and productive means coming from other sources than from the Church, which in the judgment of the Bishop are sufficient for his honorable support."

A. That is a correct translation.

Q. An ecclesiastical title is subdivided into beneficial and of poverty, to which some others, as subsidiary and extraordinary, are to be added, viz, the titles of common table, of service of Church, of mission, of foundation and of college?

A. It is "sufficiency," instead of "foundation." Except that, the translation is correct.

Q. Now, on page 214 of Koning's Moral Theology, book two: "The title of poverty consists in religious profession in virtue of which they who make solemn vows in an approved order have everything required for their support in common, which comes either from the revenues of the order or from the donations or offerings of the people. The title of common table refers to those clergymen, who, though they live by common rule, like monks, do either make no vows at all, or merely simple ones, and who can therefore leave their institution, or be dismissed from it, and are permitted to enter the secular priesthood. The title of poverty does not apply to these, nor can persons be promoted to sacred orders with this title of common table unless in congregations or institutions authorized for this purpose by special privilege of the Holy See."

A. That is the correct translation.

Q. Now, on the same page, paragraph four, "The title of mission, like other titles, can be lost by canon law sanction; it cannot, however, be taken away by any Bishop without the consent of the Sacred Congregation," that is, the Propaganda of Rome, "whose authority it is to free from the aforesaid oath, but should a title in general be lost, or even this title of mission, and another not be substituted, the priest is not on this account suspended, but the Bishops are bound to compel such parties ordained to substitute another title as provided in the canons." Is that correct?

A. That is correct, sir.

Q. Father Nolan, I wish you would turn to page 73, and I wish you would tell me if this is a correct translation. On page 73, Roman numbers, "They having made oath before they are ordained that they will serve, perpetually serve in their diocese or mission, which oath is similar to that of the Propaganda"?

A. That is authority, sir; that is from headquarters.

Q. State what you mean?

A. Rome; that is issued by the orders of the Pope; all those titles are issued by the Pope, through the Propaganda, through the Bishops, and it is proper authority.

Q. Under that oath what rights are acquired by the person ordained? A. He has a right to support.

Q. Take the same authority, book second, page 357, the heading of it is Suspensions, *Latae Sententiae, ipso facto*. You may explain what is meant by that.

A. It is when the law itself attaches suspension to a commission of a certain crime without further judicial hearing or anything else, that is *Latae Sententiae*. You may have seen an example lately in the papers.

Q. Tell me if this is a correct translation of that passage: "Bishops ordaining anyone without a certain title of benefice or patrimony, with the agreement that such persons ordained would not seek support from them, incur suspension, *ipso jure*, from the conferring of orders for three years"?

A. It is not "that such person," but that "such person so ordained," with that exception it is correct.

Q. Will you kindly see from where he gets that authority?

A. He takes it from the Third Book of the Decretals, title V. C. 33, Trid. Sess. 21, Cap. 2, Ref. I.V., Decret. T, 3 C., 45.

Q. Isn't there another authority given there?

A. Not that I can see in this book. The page of the book is 357, paragraph 1743.

By Mr. McKenna.—Is not the subject of suspension *latae sententiae* reserved to the Pope?

A. In fact a person taking this what the book says, violating this law, is referred to the Pope for dispensation for ordaining a man without a title on the condition that that man, or the person so ordained, would not ask him for support, that is an offense on the Bishop's part for which the suspension *ipso facto* is reserved for the Pope. The idea of this consecration published by the bishops, to wit: about the time the General Council was held, was to limit the number of sentences that had grown to a great number, so that a man didn't know when he was suspended, and the idea was to limit this matter; in the judgment of the Pope this was a very important thing, and so very important that whoever violated this incurred a suspension therefor.

By the Court.—Do I understand that the sentence was incurred *ipso facto*, and that he—

A. *Latae sententiae*, that means, your Honor, that when the law attaches anything to a thing it is said to be suspended *latae sententiae*, that is instead of saying "if you do so and so I may sus-

pend." But when he did such and such a thing, if he did so and so, a certain penalty attached to it; consequently a person who does this incurs a certain censure which alone can be absolved by the Pope, or whoever he delegates. [Book handed to witness.]

Q. Be kind enough to state what that book is?

A. This is the text of the old canon law of the Catholic Church, edited by various authors. The value of this book depends altogether on the authorities cited; they are decrees of Popes and General Councils, and particular Councils approved by the Pope.

Q. Edited by whom; who is the editor?

A. It is entitled a body of canon law, corrected and illustrated with notes, edited or issued by order of Pope Gregory XIII., with various new indexes and appendixes, by Lancelotti.

Q. In what year? A. Published in 1683; a very old book.

Adjourned for recess.

After Recess.

Q. I wish you would turn to page 372, of that volume you have in your hand, title five, and just tell me if it is a correct translation. "It is not lawful for any bishop to ordain clerics and grant them no alimony, hut he must choose one of two things, he must not ordain clergymen, or, if he do, let him give them means of support."

A. That is a correct translation.

By Mr. Reardon.—Q. What is that, is that a decree?

A. It is a decree, yes, sir.

Q. By whom? A. By one of the Popes.

Q. Which one of them?

A. It refers to a mark here, it refers here to a foot note under the letter *E*, he says, page 2nd the same title in the first compendium, that is what he says.

Q. Who is the author of that, where is that taken from?

A. It does not say, this is the body of the canons, it is put down as the Decretals of Gregory XIII., book the third, wherever it is taken from it is published by his authority, for it has the recommendation of his name.

Q. I understood you to say in your examination that that book is what we call a digest. A. Yes, sir.

Q. What I want to find out is whether that is a decree of any particular Pope or of Gregory XIII.

A. He refers here, as I said, in his foot note to the same title in the same compendium.

Q. That is the first edition of that book?

A. No, no; it probably refers to some other council or authors.

Q. Do you know what it refers to, what book it refers to prior to this one?

A. Really, I can't say.

Q. Can't say?

A. No, sir; the council or decree previous to that—

Q. You say there are different authorities there. What authority is there?

A. From whatever authority it is taken, it is published by the authority of Pope Gregory XIII.

Q. You couldn't tell whether that is four or five hundred years old?

A. I think it is from the council, or *Consilio Pictavensis*.

Q. That is how long ago, do you know? How long ago since that decree was made?

By the Court.—Q. I understand it was published by the approbation of Pope Gregory XIII.

A. Yes, sir; giving the new decrees of simpler forms, and the laws having the authorities of decrees, and the laws issued to the bishops, sometimes taken from the enactments of the bishops, published by the authority of the Pope, no matter what the authority may have been.

Q. At that time? A. Yes, sir.

By Plaintiff's Counsel.—It has the force of law now?

A. All this book has the force of law unless there is legislation to the contrary. Unless superceded or revoked by contrary legislation.

Q. You couldn't tell how long the authority, cited there, was the law of the Church?

A. Right on the spot now I couldn't mention it; I might not be able to give the correct chronology, but if I look at Rohrbacher I could find it.

Q. You can tell it is law?

A. It is law. It has never been revoked; no Bishop can ordain a clergyman and not give him support; the decree says, either let him do one of two things, "Not ordain clergymen, or if he do, let

him give them means of support." (Another book handed witness.)

Q. What book is that ?

A. That is a treatise of law by Koning's, "Moral Theology."

Q. I wish you would turn to page 376, it is the last portion ?

A. Under what heading. It is in Latin.

Q. Give it in English ?

A. I will, sir. The heading is, concerning the laws, "*De Legibus*," the laws. Now, sir, he says: Here is Ligouri's doctrine with regard to the authority of this book; Saint Ligouri as a theologian has the special approbation of the Catholic Church to such a degree that no other theologian is allowed to contradict him without saying, 'by your leave,' or, 'by your permission,' or some such respectful word, and the book says, 'the other parts of the canon laws have universal application, are of application universal, unless they have been abrogated or repealed by contrary law or by lawful custom,' that is, all the other portion with the exception of the decree of Gratian, and the decree of Gratian only has that much authority. It has not the authority that the other portions of the book has, because some of them have been found not to be correct in taking his authority from various sources. All the laws of the other portions of this book have universal application unless they are abrogated by lawful customs.

Q. On page 372 of the *Corpus Juris Canonici*, or the body of canon law. Tell me if this is a correct translation of that page, title No. 5 and chapter No. 4: "If a Bishop ordain a deacon or priest without a certain title from which he obtains a support, he is bound to afford such cleric a maintenance until such time as he shall have assigned him an income suitable to his clerical rank?"

A. It is not a literal translation; there are some words left out.

Q. Give the correct translation ?

A. "If the Bishop shall ordain, or shall have ordained any one as a deacon or priest, without an office or title, through which he can receive the necessary means of support, he is bound to give him those things necessary for his support until he shall have assigned him to clerical duties in some church, unless such person so ordained can live from his own inheritance or patrimony." It was correct with the exception of the words, "in some Church."

Q. Is it stated there from whence that is taken ?

A. Yes, sir. From Pope Alexander III., from the Council of Lateran.

Q. When was that ?

A. Alexander III. lived in the twelfth century or the thirteenth. The Council of the Lateran was held in the thirteenth.

By Mr. Barton.—Which of the four Councils of Lateran ?

A. The one under Alexander.

Q. Which Council was it ?

A. I don't think now. I don't remember whether there were more General Councils of Lateran than one ; I know, probably, likely, there were, but I know the first General Council of Lateran was held about the year 1215, unless I am mistaken. It is a matter of ecclesiastical history, or chronology. (Another book handed to witness)

Q. I wish you would take that book, Father Nolan, and state what it is ?

A. This book is entitled, " Canons and Decrees of the Ecumenical Council of Trent."

Q. Is that the law of the Catholic Church universally ?

A. Yes, sir. That is, it is dogmatic ; its decrees there are laws for the whole world, for every Catholic Church to the whole end of time. They can never be changed, and it is held by a great many, and by the Roman Doctors always, that there is no appeal against the disciplinary doctrine of the Canons of Trent. That is not true, for as a matter of fact a great many disciplinary decrees of the Council of Trent are not in force, are not observed. For instance, that a priest should be ordained under a mission is against the Council of Trent, and a great many other things.

Q. Do you mean by that that the Pope can abrogate the decrees of the discipline of the Council of Trent ?

A. He can, sir. A Pope can make any regulations of discipline that in his judgment are necessary for the good of the Church, but he could not abrogate any decree or definition of the faith in that book.

Q. Father, take that book and turn to chapter 2d and Session 22d, the title of the chapter is, "They who have not means of support cannot receive Holy Orders—"

A. It is stronger than that even; they are to be removed or driven away.

Q. Tell me if this is a correct translation: "Whereas, it is not becoming that they who devote themselves to the sacred ministry should be compelled, to the dishonor of their order, to beg or engage in any mean pursuit; and, whereas, it is known that in several places bishops admit to Holy Orders, without inquiry and indiscriminately, many persons who, by various misrepresentations and fraud, affirm that they have a benefice or other sufficient means of support, the Holy Synod hereby decrees that henceforth no secular cleric, though otherwise worthy as regards learning, morals or age, can be promoted to Holy Orders unless it be previously ascertained that he has peaceful possession of an ecclesiastical benefice sufficient for his honorable support. This benefice he cannot resign unless he mentions that it was on this title he was ordained, nor can this resignation be admitted unless it be evident that he has other sources of honorable support, otherwise such resignation is null and void."

A. That is a correct translation, sir. (Another book handed to witness.)

Q. I wish you would state what that is.

A. This book is called "The Acts and Decrees of the Second Plenary Council of Baltimore."

Q. Have the contents of that book the force of law in the United States?

A. Yes, sir, it has. The book is authority in the Catholic Church in the United States for priests and bishops.

Q. Turn to page 170 of that book, No. 123, and tell me if this is a correct translation: "Priests cannot be ordained without a title, whether it come from patrimony, benefice or religious poverty. In this country, by privilege of the Holy See, the secular priests, with scarce an exception, have hitherto been ordained to the title of mission. But as the period has already passed for which the faculty—authority—of ordaining with this title has been granted, we resolve that the Holy See should be petitioned to renew the grant to the bishops of the States, should it seem fit to the Supreme Pontiff; and further, that it be petitioned to grant that in the future those ordained acquire the title of mission without being obliged to

bind themselves by oath that they would serve perpetually on the missions."

A. That is a correct translation.

By the Court.—What do you mean by secular priests?

A. There is a distinction; there are two classes of priests; the term secular priest is used in contradistinction to that of religious priests, who are monks, and those living in monasteries or convents. As a general rule all those are exempt from episcopal jurisdiction; they have certain rules handed down to them by their founder, generally some saint, and they live together in a religious way and are called religious priests, and are not subject to the Bishops; secular priests, on the other hand, are such who are not in monasteries or convents, and are subject to the jurisdiction of the Bishops.

By Mr. Reardon.—Any man can go into a monastery?

A. No, sir; they can not.

Q. With their permission? A. Oh, yes.

By Mr. Watterson.—On page 65 of the same book, No. 89, tell me if this is a correct translation. "Whereas the secular clergy, by privilege of the Holy See, are generally ordained in this country with the title of Mission, we caution Bishops that they ordain those only who appear fitted for the Sacred Missions, or whose services will otherwise be, in the judgment of the Bishop, advantageous to religion, they making previous oath that they will labor perpetually on the mission to which they are here deputed"

A. That is a correct translation.

Q. Now you can just state here, when a priest is deputed to a mission, by that is meant the diocese or a congregation?

A. To the diocese. I want to say on that question that probably there is a good deal of mistake about the matter existing in the minds of some priests, too; any priest that is ordained is simply ordained, his only title is a missionary priest; he has no right to be a Vicar-General, or to be deputed to the care of a parish, or a so-called parish, than he has of being Vicar-General, so far as any statute law of the Catholic Church, his office is not that of a *quasi* pastor; the Bishop is his title and the office is conferred on him.

Q. He acts, then, as the Bishop's agent?

A. He is nothing more or less than the Bishop's agent in doing that which the Bishop cannot personally do.

Q. How can a Bishop, under his oath, refuse an ordained priest in good standing?

A. He can not. But that is first of all opposed to common sense and the laws of natural justice, that the man who works can not get any support.

Q. A man who works must get his support?

A. Exactly ; a support by law.

Q. You can state here whether a person so ordained would have a strict right to work so long as he is in good standing?

A. To work?

Q. To work in a mission so long as he is in good standing?

A. By good standing, that is the common way of expressing it, any man that is not under ecclesiastical censure, or, at least, the presumption is, that he is, because if he were, and the Bishop knowing that, would let him go on, the Bishop would be doing wrong. It is for him to see that the laws made by the Catholic Church for priests' government be obeyed.

Q. Then so long as he is in good standing he has a right to work?

A. A right to work. Well, there is no other meaning could possibly be attached to good standing than freedom from ecclesiastical censure. Any man that would give it any other meaning does not know what he says. Shall I answer the question?

By the Court.—You can answer the question.

A. Well, so long as he is ordained for the work of the ministry he has a right to be employed, for the one thing implies the other. There is no statutory enactment in the laws of the Catholic Church in Baltimore, compelling them to do that your Honor, but there is another law, for all laws are not contained in that book. There is another law called the law of custom, which properly introduced and invested with the requisite traditions, is not only authority to abrogate an old law, but to introduce one utterly opposite ; and in this country the custom is, when a priest is ordained, he is employed, should be employed in some work, and in what work is the Bishop's business. He might be appointed as an assistant. or do any work that is ecclesiastical, for that disgraces nobody. As I said there is no statute law for that, but there is that law of custom. For instance, take our own diocese of Pittsburgh. I don't think there are but three or four priests of all the priests in the diocese, except

in missionary work. Certainly a Bishop has a perfect right if he supports a priest not to employ him; but since he gives his time and has spent the best portion of his life qualifying himself for the priesthood, and when he is considered fit by the Bishop who ordains him to exercise the ministry, and he is ordained under the title of mission, the law of the Council of Trent, the Council of Baltimore and the canon law, give him the right to be supported, and, as I said before, if the Bishop has so many priests that he cannot employ them all, that is his business. He may say to a man, well, I have no work for you now. You can go as supernumerary anywhere you please. He certainly has that right, not to employ him, but he is always bound, at the same time, to a certain means of support; no man can be ordained without a certain means of support.

Q. Father Nolan, I wish you would take this book and state what it is? A. Decrees of the Diocese of Pittsburgh.

Q. I wish you would turn to page eight of that book and see if this is a correct translation. "Although we do not wish to change anything in the discipline which exists in this country with regard to the rights of those who have the care of souls, as has been declared in the First Provincial Council of Baltimore, we wish to designate certain churches which have revenues for the support of priests, and to which the others which are to be succursal or auxiliary as not approaching them too closely, to be administered like to these *quasi* parochial ones. The parish priests, whom we shall designate as such, will be only those designated, though, perhaps, for a time we grant to another priest the charge of the so-called parish priests?

A. Well you didn't translate the whole of No. 10 in full.

Q. Please translate it, Father Nolan?

A. "Although we shall make no innovation in the discipline which is in force in this country, as declared in the first Council of Baltimore, concerning the rights of those who have the care of souls, we wish that some churches, to be designated by us, and which may have a revenue necessary to the support of a priest, and to the others which are *succursal*—that is, minor churches—and are not too near to them to affect the auxiliary churches, we wish these churches to be administered, or to be considered, as *quasi* parish churches, to have the rights of *quasi* parish churches." It is very difficult to translate this right off: "And the priests whom we shall set over these *quasi* parishes we wish to be called, and will call them,

parish priests, because that in the duty confided to them they discharge the duties of a parish priest, and as such they are defined by the canons. We wish those priests whom we shall set over those *quasi* parishes, we will call parish priests, because we wish them to receive and exercise in many things the duties of parish priests as they are defined by the canons."

Q. You can tell me if this is a correct translation of No. 11, on page 8, in that same book: "The parish priests whom we shall designate as such will be only those thus designated, though, perhaps, for a time, we grant to another priest the charge of these so-called parish churches, but we will have the other priests as missionaries, whose services we will employ at our pleasure anywhere we shall judge to be most profitable to the people."

A. Yes, sir; that is correct.

Q. Now, in Appendix No. 1: "Names of churches referred to in this statute as *quasi* parochial: St. Paul's Cathedral, Pittsburgh; St. Patrick's Church, Pittsburgh; St. Philomena's Church, Pittsburgh; St. John's, Birmingham; and St. Michael's, Birmingham, are they all given there?

. A. No, sir. There are more churches mentioned here than those you have mentioned.

Q. Those given are there? A. Yes, sir.

Q. I wish you would turn now to page 32 and tell me if this is a correct translation: "Lest any confusion should arise from the names of parish priests which we wish to give those to whom the care of souls is committed, we prefer that they be called Rectors. With regard to the rest of the priests, what has been declared in the other synods is to remain intact there." Is that correct?

A. Yes, sir.

Q. Turn to page 35. No. 4, and tell me if this is a correct translation: "According to the decision of the *Sacred Congregation de Propaganda Fide*, Statutes of Pittsburgh, page 35, there are no canonical parishes, we solemnly promulgate the decrees of the Second Plenary Council of Baltimore already approved by the Holy See, and we declare that they have the force of law in our diocese." According to the decision of the *Sacred Congregation de Propaganda Fide* there are no canonical parishes? Is that correct?

A. You should start that with "Although"—there is a disjunctive clause in it.

Q. Translate that section.

A. "Although, according to the decision lately made by the Sacred Congregation, there are not as yet any canonically instituted parishes, hence pastors are not pledged, neither according to justice or charity, to apply the holy sacrifice of the mass on Sundays or holy days, yet we earnestly exhort that they should apply them on the holy days for the benefit of those from whom they receive their support." It has been stated here that a man here is a parish priest, and this upsets that doctrine, because the canon law of the Church makes it obligatory upon every canonically constituted priest to say mass, or offer the holy sacrifice of the mass, for the people of his care, and the Propaganda of Faith decided no priest is bound, because they are not canonically constituted parishes. The whole diocese is one canonical parish; the division is simply an ecclesiastical division made by the Bishop himself, and he can abolish it when he pleases; he can leave only two congregations in the whole diocese, or he can sub-divide it into twenty, or any number he chooses.

Q. What is meant by a canonical parish?

A. One whose limits are settled and defined, and regulated with the consent of the Bishop and the approbation of the Pope. Dr. Smith discusses it in his "Canonical Law," which, I may say here incidentally, is a very useful book; he thinks that a Bishop here could, is by his office competent to erect a canonical parish; other authorities say no, it requires a Pope to do so.

Q. If there was a canonical parish, the Bishop could not change it?

A. He could not. The priest would have the same right in that as the Bishop in the diocese. He could hold it in his own name; we do not. I cannot say that I am a parish priest of Butler; I am not. The Bishop absolutely has the right to remove anybody for sufficient cause; he would not have that at all if I were a parish priest unless a man's ministry was unprofitable to the people on account of hatred and dissensions and quarrels, though he could and ought to be removed and transferred to another parish, equally good, by the Bishop. If a man were incompetent by not having sufficient learning or ability for the care of that place, then there is room for an economical removal from that place, but not from the ministry; he can be transferred to another place, where his ministry

is more profitable. Now, the Bishop is present; he knows that is all proper and right.

Q. Will you kindly translate the first portion of that No. 1?

A. "We solemnly promulgate the decrees of the Second Plenary Council of Baltimore already approved by the Holy See, and we hereby declare that they have the force of law in our diocese, and as such are to be observed by all those whom they concern."

Q. And on page 37, paragraph 9, tell me if this is a correct translation: "Considering the circumstances of the times we permit that the salary of pastors be increased \$200, and that of assistants \$100; so that pastors receive \$800 and assistants \$400. Should however, the pew rents be insufficient to make up this amount, he can take from the offerings of the people as much as is necessary to make up the salary. But should the salary seem insufficient for a priest, it shall be lawful for him to go to the Ordinary and disclose to him in their order the reasons which may justly exist for increasing the statutory salary." A. That is correct.

By Mr. Reardon.—The priest may live on \$400? A. Yes, sir.

Q. The Bishop allows him to take the \$800; he is not commanded to do it?

A. Not at all; he may live in evangelical poverty if he chooses.

Q. Is it not the salary which is decreed by the statute?

A. Yes, the \$800, with the permission of making known the insufficiency of the \$800, should it exist, to the Bishop, and then if he allows you to take a thousand you can take a thousand, if the revenues of the congregation afford it, and if you have his permission, but without his permission and without the ability of the congregation to afford a thousand dollars, you can't.

Q. The \$800 though?

A. That is the sum for every priest. Now, it may happen that a man is in a place, for instance to attend to missionary duties. It is incumbent upon him that he should hire a hostler to attend to his horse, and then, of course, he has to buy his horse feed, and all those expenses of a horse and a man will be very heavy on him, consequently \$800 will not be sufficient for a man like that, and in a place like that the priest has a right and is allowed to make known such a condition of affairs to the Bishop, and ask him to allow him to increase his salary, if the revenue arising from the pew rent and

other sources warrant it. If the Bishop is satisfied, then the man can take his thousand dollars.

Q. Can the Bishop, however, change that if he chooses?

A. Change what?

Q. The decree, and decree to him say, for instance, \$600 only.

A. Now, if a Bishop can do that, he can reduce the salary to zero, and if it is competent for him to say how much is sufficient support, he might say a hundred dollars a year, if it is left to the Bishop to be the judge according to the times and the manner of living that pertain among the clergy of any particular country or place, it is his business as Bishop of the diocese to regulate that matter, and I should always think, in that matter, of consulting the missionary. Now years ago, probably before I was ordained, priests were allowed only \$600. War times came on, and everything advanced in value two-fold, and it was raised to \$800 with the proviso that if he got the permission, and he needed it, it could be raised to a thousand. But the Bishop is not to be the sole judge of how much a priest is to have; for if they were so, a Bishop might probably say to a man whom he did not like, 'I consider a hundred dollars a year is enough for you.' And he would be compelled to live on it; however, as a general rule, the Bishop has that right.

Q. Now, when a law is made in a diocese by the Synod, is not that supposed to be a permanent law until changed by the Synod?

A. Yes, sir, that is true; all Synod laws or decrees are presumed to be permanent. At the same time the Bishop can abrogate any one at all, at any time he pleases, through his own laws, his own private regulation.

Q. Has this law ever been abrogated?

A. No, sir; it has not.

Q. Please state what that book is.

A. The most recent edition of St. Alphonso de Ligouri, vol. 3rd.

Q. Please state if he is an authority in the Catholic Church.

A. He is, sir, one of the highest authorities, probably the highest writer, as a mere writer, of any theologian.

Q. I wish you would turn to page 647 of that book.

A. Yes, sir; I have got it.

Q. Book 5, chapter 2d, and see if this is a correct translation: "It is certain from the Council of Trent, session 21st, and chapter

2d, that a Bishop cannot admit any person to Holy Orders unless he has a title of support."

A. No. I will translate better than that. "That a Bishop cannot admit nobody to Holy Orders," really the same though, "to Sacred Orders, unless he has a title of support, otherwise the Bishop ordaining or granting letters dimissory for ordination is himself bound to support him until such time as he is in possession of a title."

Q. I continue to quote: "If, however, the Bishop should leave the matter to examiners and they should, in bad faith, approve the title, they are bound, pro rata, for the support of the person ordained; but should they not have the means to furnish the support, an action lies against the Bishop."

A. Yes, sir; on the decretal, *Cum secundum*, the decretal mentioned above.

Q. Now supposing a man were, for instance, a first-class musician, and he were able to earn ten thousand dollars a year thereby, could he be ordained under that title?

A. He could not, sir, because that is not considered of itself a permanent thing.

Q. Can a man be ordained to his own industry?

A. I think not.

Q. I wish you would translate that passage there on page 649 of the same book, paragraph 818, about the middle of it. "And concerning this matter Benedict XIV adduced many decisions of the Sacred Congregations, and particularly one that emanated from it in the month of October, 1859, and in which occurs these words: 'if any one has only what he claims from his own industry or from his labor, as for example, suppose he was a master, a teacher of grammar, a painter, or writer, or of any other profession, that man cannot be ordained, although the revenues arising from the aforesaid source be sufficient for the maintenance for his work.'"

Q. There is another one there also.

A. On the same page, No. 819, the second period. "If a son without the consent of his father wishes to receive the Holy Orders of the priesthood, is the father bound to assign him a patrimony? We think yes, and several other authors; for one of these say that the father can be compelled thereby" that is compelled to do that "by the ecclesiastical clergy, and, also, the father can be compelled

to assign a suitable portion for his daughter." Just as the father would be compelled to assign a suitable portion for his daughter who contracted a worthy marriage, or who wishes to enter religion.

Q. (Another book handed to witness.) I wish you would state, Father Nolan, the title of the book you have in your hand.

A. Selections of Canon Laws, adopted to the method of the decretals of Gregory IX which Philip De Angelis delivered in the schools of the Pope in Rome.

Q. What value is that as an authority?

A. It has all the value of a man whom the Pope selected to teach that particular work in his own college, and I know that De Angelis has probably the reputation of being the first canonist in Rome.

Q. I wish you would take that book and turn to page 228 and tell me if that is a correct translation, "Finally, we will make some remarks on the title of ordination. As the term title in ancient times referred to churches, particularly the lesser ones, as distinguished from cathedrals, it is directly understood what comes under the dictum that a cleric cannot be ordained without a title; that is, a cleric not ascribed to any church in which ordination was called irregular, or absolute, especially in canon sixth of the Council of Chalcedon, and clerics so ordained were called absolute or *nomadic* or *acephalous*." A. That is correct.

Q. Give the authority there?

A. *Thomassin Vetus et Nova Ecclesia Disciplina*, part first, lib. 2; cap. 93; No. 1.

Q. The same, page 229, see if this is a correct translation: "When on division of the properties appertaining to the churches, and the portion falling to the clergy was divided into as many benefices as there were officers in any church necessary for the daily ministry to be fulfilled in it, to be ordained with the title was the same as to have a benefice in any church, because it had annexed to it both the exercise of the sacred ministry, and because it supplied the clerics the means of decent support. And as it was evidently necessary for the reception of any order, even minor ones, to be intitulated in a church, so also was it necessary for the reception of minor orders to be ordained with the title of benefice; whence it was that anciently all clerics, even minor ones, were intitulated; but in the course of time, the ecclesiastical law being disregarded

with reference to initiation into orders, very many clerics were ordained without the title of benefice. These persons afterwards, as they were unable to provide for their decent support, did not disdain to practice every kind of sordid employment. To remedy this evil many councils were held, but especially the Third Council of Lateran, under Alexander the Third, endeavored to stay the abuse, which council enacted the canon referred to by the blessed Raymond among the decretals of Gregory the Ninth. *Lib. 3, tit. 5, de Præbendis, cap. 4.* If a Bishop shall ordain anyone without a certain title from which he may receive the necessaries of life, into the deaconate or priesthood, he shall supply to him what is necessary, until he assigns to him in some church a salary suitable to his clerical rank, unless by chance such person ordained has of his own or his father's inheritance the means of support. The very mild tenor of this canon makes known to us how grave and truly irremediable had been the evil, since the provision was made not for all orders, but only for the greater ones, such as were at that time the priesthood and deaconate; and indeed a case is excepted in the provision—if they should possess a maintenance from their own or their father's inheritance. And although Innocent the Third, in chapter the 16th *de Præbend*, thought that this provision should be adopted with regard to sub-deacons and others ordained with minor orders, yet it could not be reduced into practice, as Innocent the Fourth, in the dictum, *cap. 4 Episcopis*, acknowledged. The Roman Church does not compel provision to be made unless for those constituted in sacred orders. From that time a title for ordination was no longer required for the minor orders, but only for the greater ones, as were sub-deaconship, deaconship and priesthood. But from a wrong interpretation of that canon it also happened, that from that time it was thought that anyone could be ordained sub-deacon, deacon or priest without the title of benefice, provided he had sufficient patrimony either out of his own or his father's exchequer, and thus patrimony was considered as a title of ordination, *Philips Op. et tom. cit 446*; hence it happened that Bishops sometimes ordained clerics from whom they exacted sworn promises that they would not ask for the means of support, which custom Gregory the Ninth, in *Tit. de Simonia, cap. 45*, reprehended. The Council of Trent restored in the best manner it could the ecclesiastical discipline, and in session 23, *cap. 16 de Reforma*, wills that all clerics be ascribe to churches or

sacred places, for the necessity, or utility, of which they were accepted and therein perform their sacred functions. And in session 21, *cap. 2*, it restored the ancient discipline with regard to the major clerics, that no one should be promoted to these orders, unless besides all other requisites it was evident that such person peacefully possessed an ecclesiastical benefice sufficient for his support, but that those having a patrimony or pension could not be ordained unless the Bishop should judge it to be for the necessity or utility of his churches, and this is the common law under which we as yet live."

A. That is all right.

Q. Many decisions of the Sacred Congregation of the Council are cited by authors from which it is manifest what comes under the title of Benefice, of Patrimony or Pension, in what property of patrimony consists, in what its stability. We cannot enumerate all the cases separately, but among other authors we indicate especially two, viz.: Richter, in *Declarationibus et Resolutionibus Additis Editioni Canonum et Decretorum Concili Tridentini* to the *Dictum Cap. 2 sess. 22*, and *Lucindus Op. Cit.* part I. vol. 1, page 443 *et seq.*, who methodically gathers everything, producing very many decisions of the Sacred Congregation. This discussion—

A. No. There is no discussion there. *Animadverso* is not discussion. It should be one or two observations are here to be made.

Q. This observation is to be made only with one or the other, and first after the constitution already cited, '*Apostolice sedis moderationi in suspensionibus latæ sententiæ, summo pontifici reservatis*, at present with regard to the ordination of such clerics without a title they do not incur suspension, but the Bishop ordaining without the title of Benefice or Patrimony, who makes an agreement with the person ordained that such a one will not seek from him his support, such Bishop is suspended, *ipso jure*, from the power of ordaining for three years, as in No. 2, which censure, however, does not affect the clerics ordained. Again, secular clerics who knowingly cause themselves to be ordained on a false or fictitious or fiduciary title, although they grievously sin, yet they incur no censure, since it is not expressed in the above mentioned constitution. Hence it is, that even to the very latest times, recourse was had to the sacred penitentiary for absolution of the censures which those thus ordained incurred, and for dispensation from irregularity, if

perhaps thus censured they had officiated. But at present this recourse is not had, since the censure has no place. In the third place we remark that in all those countries which are subject to the Sacred Congregation de Propaganda Fide, a custom has been established from a very long time, sanctioned by express privilege of the Holy See, that sacred ministers be ordained to the title of Mission, which means that they be supported from the revenues of the *vicariate apostolic*, or of the diocese for which they are ordained and where they swear they will exercise their ministry, and this is also observed at the present day, which according to the law of privilege was granted to the Urban College de Propaganda Fide by Pope Urban VIII., the 18th of May, 1638, and afterwards to some other college."

A. Yes, sir; that is a correct translation.

Q. I wish you would take that work and state what it is, if it is authority?

A. This is a manual of all canon law, by D. Craisson, formerly Vicar General of the diocese of Valence in France, examined in Rome by the superior authority and recommended by the Roman examiners.

Q. I wish you would turn to page 247 of that book and tell me if this is a correct translation "the Ordinary" Bishop, the word ordinary, does it mean a Bishop?

A. That is the meaning. The etymological meaning is a Bishop who has the ordinary jurisdiction of the diocese. You see now you have two meanings, the etymological meaning or the meaning itself. Now the word ordinary means one having the ordinary jurisdiction of the business. He is also called the Diocesan, because he has charge of the diocese, and also a Suffragan, because he is under the Archbishop.

Q. "An Ordinary who permits the resignation made by any priest of his benefice, who has nothing else for his decent support, such Bishop is bound to support him." Is that correct?

A. That is a correct translation taken from the Council.

Q. What Council?

A. From the secretary of Council of Interpretation.

Q. Tell us what that is?

A. There is a congregation established in Rome, and which probably, from the members constituting it, is without doubt the

most learned in Rome, and that congregation is called the Interpreters of the Council of Trent, and every case involving jurisprudence comes before them. It may be sent by us to the Propaganda, but they again refer that question to that Council for their opinion.

Q. Is not that the Supreme Court ?

A. Yes, sir ; but they are all approved by the Pope.

Q. On page 250 of the same book, tell me if this is a correct translation : "Bishops knowingly granting letters dimissory without certain title are bound, and their successors bound, even the chapter"—that means administrator.

A. "And also the chapter during the vacancy of the See" that means a body of canons attached to cathedral, and when the Bishop dies the apostolic jurisdiction devolves upon them, and within eight days they have to select some one to be Vicar, who is what we generally call an administrator.

Q. The Bishop knowingly granting letters dimissory without certain title are bound, and their successors bound, even the chapter—

A. No, no ; they are bound, "the bishops, also their successors, and also the chapter during the vacancy of the See are bound," understood—

Q. "To provide for those persons thus ordained a sufficiency for their support until they obtain an ecclesiastical benefice ?

A. Correct.

Q. Where is that from ?

A. That is taken from Innocent the Third. Chapter *cum secundum 10 de prebendis*.

Q. On the same page, 250, see if it is a correct translation : "Nay more," according to Ferraris, Ordo, Art. 4, No. 31, "Should a cleric knowingly be ordained without a title by more than one bishop, to wit, of his domicile and of his origin, then each of them is bound for the full amount to provide for his support." Is that correct ?

A. Yes, sir ; that is, the two between them, the two are bound between them ; the obligation is equal. According to ———, if any cleric should knowingly be ordained without a title by many bishops, that is, one of his domicile and the other of his origin, then each one is bound, that is, both equally bound to provide the person so ordained with a necessary support.

Q. See if this is correct: "On the same page Phillips also says, Ecclesiastical Law, vol. 1st, page 465: 'Agreeing with Fagnana, that the aforesaid *onus* passes to the heirs of the bishops—

A. Obligation.

Q. "Obligation passes to the heirs of the bishop as far as they inherit from the Bishop subsidiary to the incapacity of the Bishop's successor in office."

A. Correct; but I will translate this paragraph from Phillips: "That the foregoing obligation passes to the heirs of the bishops who ordain them, taking into account the inheritance of that bishop and passes in the second place to the successors." That is it. "That the foregoing obligation or duty passes to the heirs of the bishop who ordains them, considering it as an *onus* on the said bishop's inheritance or at least subsidiary and in a secondary manner only to his successors, provided the bishop be not able."

Q. That is found on what page? A. On page 250.

Q. Tell me if this translation is correct: "Besides these penalties, a bishop ordaining clerics without a title, having exacted from them an oath that they would not demand from him their due support, incurs a suspension for three years, imposed by Gregory IX."

A. That is a correct translation, in the very words.

Q. Take the same book, on page 45, on the necessity of an ecclesiastical title for promotion to Orders No. 1999: "By title is properly understood the Church to which a person ordained (even in the first ages of the Church) was ascribed, in which he had his support, and which support ought to be a benefice after their institution." A. That is right, sir.

Q. "The title of patrimony for seculars and of poverty for religions was admitted in the latter ages to such as had no benefice, hence the following enactments:" this is paragraph 2000 "for the lawful reception of Sacred Orders a canonical title of support, to wit: a benefice peacefully possessed is required, but in its place or stead a patrimony sufficient for decent support, or religious poverty. This can only from the Roman Pontifical on the ordination of sub-deacon, also from the Council of Trent, sess. 24, and chapter 2d, where the reason for this requirement is given, viz: lest clerics be obliged to the dishonor of their order to beg or exercise any mean employment; with regard to the title of benefice it is to be remarked first that if it be sufficient for honorable support and free

from all claim. This is evident from the Council of Trent, sess. 21, chapter 2d, that no secular cleric be promoted to sacred order, unless it be evident beforehand that he has an ecclesiastical benefice, and that he be in peaceful possession of the same."

A. I will translate that the other way. "It is required that the benefice be of itself and without the aid of any other adjunct or patrimony be of itself sufficient."

Q. Give the authority there.

A. The authority is the constitution of *Speculatoores*, paragraph 3.

Q. I have it translated. "It is required that the benefice be of itself 'per se' sufficient without any addition from patrimony." And then paragraph 2002 "We observe secondly that it appertains to the Bishop to determine what is deemed a sufficiency of the benefice. If there be in the diocese a sum fixed by the synods, '*taxa synodalis*,' it must be followed." Is that correct?

A. That is correct.

Q. "If there be no such sum fixed by the synod the custom of the country is to be observed, because the amount not being so fixed the Bishop is supposed to approve." Now paragraph 2003 says: "In the third place we observe that a person cannot resign the title of his benefice, unless after having made mention of the fact that he was promoted, or ordained to the title of benefice; nor can the resignation be admitted unless it is evident that he has from other sources the means of honorable support, otherwise such resignation is null and void. Council of Trent, sess. 21, chapter the 2d."

A. Correct.

Q. "The Bishop who accepts the resignation tendered by any priest who has not besides that benefice the means of honorable support, he—the Bishop—is bound to support him. Sac. Congregation of the Council."

A. That is correct, he is bound to support him.

Q. Now paragraph 2004, "With reference to the title of patrimony or pension it is to be observed first that no one can be ordained except those whom the Bishop shall judge to be for the utility or necessity of his churches with the further proviso, that said patrimony or pension is really in their possession and is sufficient for their support. Conc. Trident, sess. 21, chapter 2d. No one can be ordained to the title of his own industry."

A. That is right.

Q. Now 2,005, see if this is a correct translation : "We observe, secondly, that this patrimony or pension cannot, under any circumstances be either alienated, extinguished, or resigned without the license of the Bishop, even though the party ordained should afterwards obtain a becoming benefice, unless the benefice be substituted for such title by the Bishop—*Ferraris, verbatim, Ordo*, article 2d, No. 94—or that he has otherwise the wherewithal of support. This from the Council of Trent is also sanctioned by various decisions of the Sacred Congregation." Is that correct ?

A. That is correct, yes, sir.

Q. On that same page, 2,013, see if this is a correct translation : "What penalties do the ordainor and the ordained, without a valid title, incur ? We answer first that those ordaining or granting even dimissorials or letters for ordination without a certain and valid title, both they and their successors—this includes the chapter, also, *Sede Vacante*—are bound to support those thus ordained until they obtain an ecclesiastical sufficient for their support—thus, Innocent III, *Cap. Cum. Secundum*, 10 *De Praebendis*—nay, more according to *Ferraris Vo. Ordo*., article 4, No. 3." That will do. Is that correct ?

A. Yes, sir. (Another book handed to witness.)

Q. I hand you the Acts and Decrees of the Second Plenary Council of Baltimore, page 57, No. 77. See if this is a correct translation : "Finally the Judges of Causes, *Judices Causarum*, if it seems proper to the Bishop, may be chosen out of those Counsellors who are to adjudge by Episcopal Delegation in the first instance on priests under indictment ?"

A. I don't agree with that translation. I will translate it this way, subject to correction : "Finally, or lastly, let the *Judices Causarum* be selected, or may be selected, or let them be selected from the number of the same consultors if it appears so to the Bishop." That is if it appears proper or right to select them from the consultors. "Let the *Judices Causarum* be selected from the number of the aforesaid consultors," that is the Bishop's Diocesan Consultors, if it appears good to the Bishop, "Who are to judge in the first instance, from the Bishop's Delegations, those priests accused of crime according to the regulation which was prescribed in the Provincial Council of St. Louis, held in the year 1855, and

recognized by the Holy See, acknowledged and recognized, and we hereby, the Fathers of the Plenary Council of Baltimore, declare to be the common law." The aforesaid decree is as follows. Of course in translating in this way it is very difficult, the Latin is so very different from the English and the words scattered probably four or five lines away; I cannot give it, therefore, an elegant English dress right away: "Priests to whom the exercise of the priesthood may be interdicted by the sentence of the ordinary process has no right to seek support from him, as they have rendered themselves, through their own fault, disqualified for missionary employment. But in order to take away all cause of complaint the Fathers resolve that it is entirely expedient, or necessary, that a certain judicial form of trial should be observed which approaches as near as possible." I think some words are left out of this, this is the correct translation: "But that every cause of complaint may be removed we, the Fathers of this Council think it altogether expedient, or advisable, that the ordinaries—that means the Bishops of each diocese—that they should observe in criminal causes of clerics or priests a certain form or judgment which approach as near as possible to that prescribed by the Council of Trent, viz: That the Bishop or his Vicar-General, with his commission, or through his commission, should elect two of consultors, not always the same consultors, who should assist him in judging the priest accused of crime; however, before a notary of the same Bishop, to have the votes of either—they both should have only one vote, and either can be given in favor of the Bishop, but if both of them should disagree with the Bishop or his Vicar-General, then let him elect a third one from the aforesaid consultors, and according to that regulation—or, according to the decree of that third, or whosoever that third should agree with, the case should be decided—according to the evidence of that third the case must be decided. But if it happens that all the consultors differ from the Bishops then the case should be referred to the Archbishop or to the Metropolitan, who should weigh the reasons upon which the sentence was passed and who should pass judgment." I don't say that this is in the most elegant form. It renders the sense of it.

By the Court.—By the expression criminal cause used there what do you understand?

A. Such an offense as would imply on the Bishop's part an obligation to dismiss him or to punish him severely, according to the nature of the offense, and those opposed to simply such offenses as are imprudent, offenses against morals.

Q. Would drunkenness be considered a criminal offense ?

A. A criminal offense, sir, if the drunkenness was public and notorious in the place where the priest lived, so that a greater portion of the congregation would know it ; of course what is known to one would get from one to another and get spread around, and after awhile become a matter of public notoriety. In that case it would be. But there should be notoriety of the fact. Drunkenness privately is certainly a sin before God, but the Bishop cannot take any cognizance of it unless it be a matter brought before his tribunal.

Q. Should the reason which would justify a Bishop in refusing employment to a regular priest in the diocese or give him support be a criminal offense within the meaning of that decree which requires a trial ?

A. It should be, yes, sir ; and the Bishop cannot refuse to employ a man for what he considers an offense, and if he is in the ministry he cannot eject him from the ministry nor deprive him from that office he holds even though the man is guilty of the offense, as long as the Bishop observe the common law of the Catholic Church of the United States ; unless by giving him a trial before two of his own diocesan councilors. They need not be necessarily one of his councilors, but may be selected from any priests of the diocese. But let me make this statement, that while this enactment on page 177 lays down a trial as a common law of the Catholic Church of the United States as a necessary prerequisite condition to deprive any priest of his parish or ministry, the mode of trying is now absolute, because it has been expressed by the letter of Instruction, issued by the Holy Father on the 28th of July, 1878. All that is valuable in that remains, the trial by jury or the trial before your peers, that remains intact, but the method of conducting the trial has been changed. He says now, before five of the selected or elected in the synod, or where five cannot be conveniently selected, before three ; a more correct word would be a commission of investigation, that is a more correct word. A commission to investigate the truth of the reports for which the priest is summoned to answer. They are *quasi* judges, and they are to help the Bishop in the in-

vestigation into the matter. They are to help the Bishop in arriving at a correct conclusion.

By the Court.—Can a Bishop refuse to give a priest work when requested by the priest, and refuse to give him any allowance for his support without giving the priest any reason whatever for his action?

A. He cannot, sir; he is violating the common law of the Catholic Church of the United States; there it is, sir, No. 77.

By Mr. McKenna—Is that whether a priest asks for a trial or support?

A. No priest need ask for a trial, that would put himself in the position of a criminal trying to acquit himself.

Q. Has he the right of appeal?

A. Certainly.

Q. What about an extra judicial appeal?

A. There is no appeal; that is a special notice; it is no appeal at all. In order that there might be an appeal, there must be a sentence pronounced by a lower court. You take an appeal in order that you have recourse to a higher court to protect a wrong. An appeal is similar to carrying a case from the Common Pleas here to the Supreme Court. An appeal always implies that a judgment was entered and sentence given.

By the Court—I will ask another question: Under the canon law, or the laws of the Catholic Church, if the Bishop wrongfully refuse to give a priest work, is the priest still entitled to support from the Bishop?

A. He is, sir; there are the instructions issued by the Propaganda, the College of Rome, the Office and Title of Missions, which says: "That they have a right to decent support until they shall have lost that office or forfeited that office."

By Mr. McKenna.—Are they not required to ask for their support?

A. Why the mere fact that you are a priest of the diocese implies it.

Q. Suppose a man leave the country altogether, is the Bishop required to send him money?

A. Certainly not, sir; excepting in a case where he had no other means of living.

By the Court.—Suppose a priest, being in the diocese, asks for work from the Bishop, and the Bishop refuses to give him work, on the ground that there are some reports against him as having been too much addicted to the use of ardent spirits, no charges are preferred against him, but in consequence of these reports the Bishop refuses to give him work, and makes no provision for him in any way, is he entitled to his support?

A. He is, sir; every man ordained under the title of mission is bound to have his support until he forfeits that title, and there are only two ways known to the Catholic Church by which he can forfeit that title, that is by irregularity and by censure. If he is suspended, even extra judicially suspended—

By Mr. McKenna.—Cannot he by abandonment?

A. He cannot, sir; I assume that no man would deliberately sin—commit a sin—especially one that would be so injurious in its consequences. Every man who is a priest has to take an oath when he is ordained a sub-deacon, to serve on that mission as long as he lives, and then he cannot violate that oath without sin, and by abandoning the work of the ministry in the diocese he violates that oath, and the Bishop cannot dispense with that oath.

Q. There are many instances of the abandonment of the ministry? A. Yes, sir; there is one instance by Judas.

By the Court.—Does the Bishop's refusal to give him work, because of unfavorable reports of his character for sobriety, does that of itself deprive him of support by the Bishop?

A. It does not; he is entitled to his support by this diocese until he is convicted. Under the canon law he has a right to his support.

By Mr. McKenna.—What is the priest's remedy for an act of injustice, or denial of right, or refusal of appointment, or support on the part of the the Bishop to a properly qualified priest?

A. Do you mean practically?

Q. Yes, sir; in the Church?

A. Well, so far as I know, there is no canonical remedy provided. You cannot have recourse to Rome, for that would only be on appeal, because I assume if a Bishop refuses to give you a trial, there is no sentence; what do you appeal from; what decision?

Q. We won't argue the case, Father Nolan; but don't there exist tribunals in the Church for hearing all ecclesiastical causes,

either by bill of complaint, citations, appeals, or by whatever name you choose to call them?

A. Let me say that there are no tribunals at all established by the *Instructio* until by this decree of Baltimore, and that decreed the institution of this tribunal, though the law there, as Shakespeare says, was more honored in the breach than in the observance.

By the Court.—Where the Bishop refuses to give a priest work, on the ground that he has heard reports unfavorable to him regarding his character for sobriety, and refuses to give him support, what remedy has that priest?

A. He has an extra judicial remedy, that is, in the attitude of a suppliant, to go to Rome and lay his case before the authorities there, and they will very likely refer it to the Bishop. But I do not know that there is any express provision within the reach of the priest to get his rights.

Q. What I mean is: Is there any canon law wherein he has the right to demand an investigation or trial, or is it merely as an act of grace that some superior authority may hear him?

A. It appears to be like a matter of grace to hear him. For instance you cannot say before the Bishop's tribunal, "I want a hearing," because they might say, "We do not exist as a tribunal until we are called together." You could go to the Bishop and ask him to tell you the reason, and he does so, and when you demand the proof he may say, "It is not necessary." You may say, "I demand a hearing," and he may refuse it to you. So far as I know I do not see any way that he can force the Bishop—practically.

By Mr. McKenna.—Cannot he go any further than the Bishop?

A. I saw it here perfectly—an appeal to the Archbishop is taken no notice of. I know in the case—

By the Court.—I ask the question if he has an ecclesiastical right of which he cannot be deprived under the rules of the Church, an appeal either to the Archbishop or to Rome where they are compelled to hear his case?

A. I don't think, sir, that he has any such right.

Q. In the case I have supposed—I wish to press it, to get your views as an expert in the case—where a bishop refuses to give a priest work or any employment, on the ground that he has heard unfavorable reports about him as to sobriety, and refuses to give him any support, what legal remedy has he under the laws of the

Catholic Church? I mean has he any right to demand of the Bishop, or of the Archbishop, a trial or an investigation, or is it merely a matter of grace whether the Archbishop will entertain any complaint, or a matter of grace at Rome?

A. The priest has the right to demand a trial before the Bishop, because that right is a common law as laid down here. Now, suppose a Bishop refuses a trial to the priest. I must say again that the priest cannot appeal to the Archbishop unless in a formal way. He may go to the Archbishop in the garb of a suppliant.

By Mr. McKenna.—The Court is asking you if he has the right?

A. The right? They can have the right where it is an informal one.

By the Court.—What I mean by a right is a right that exists in your tribunals in the diocese; that if the Bishop refuses that right he may be compelled to give it by a higher authority?

A. So far as I know there is no other remedy in the Catholic Church, excepting to lose your time, your money and your trouble in hunting justice beyond the seas, and often without finding it.

By Mr. McKenna.—You are asked now as to the canon law?

A. There it is now, your Honor, as we have it in the book. It is the common law of the Catholic Church that every priest before he is put away out of his place or deprived of his maintenance, he must have had a hearing before a tribunal and actually convicted, convicted of crime and then have a judicial sentence passed. If this thing be done with any priest in this way, of course the priests have an appeal to the Archbishop, and he is bound to hear it, because that is a regular judicial proceeding; but supposing for instance that a Bishop should suspend a man without right, thinking that they can do everything, should write letters to the priest this way and say "your faculties is hereby withdrawn, please leave that house where you are." If such priest went to the Bishop and asked him "what did I do?" He won't tell you. You see even in the case where the martial law comes in, in the Council of Trent, about the suspension *ex informata conscientia* you had no appeal, because all you have to do is simply to write a letter to the Pope, or to the Propaganda, and explain that you were suspended by the Bishop in this way, and then they always write back to the Bishop and request him—order him to state to them all the reasons why he has suspended the priest, and then if they consider his reasons not

sufficient, they will refer the matter to the Archbishop, or to some other Bishop in the province to decide; and then if the priest is suspended without sufficient cause his position is restored.

By Mr. McKenna.—You say there exists no law in the Catholic Church for the priest to compel the Bishop to hear him?

A. As I said before if the Bishop in the first instance refuses to do his duty to observe the common law of the Catholic Church as he ought to do, to give every priest a trial after suspension, because a suspension *ex informata conscientia* does not deprive him of his living, only suspends the exercise of his order.

Q. Suppose he is not in a benefice or an office?

By Mr. Watterson.—Is not the title itself an office?

A. The title itself is an office.

By Mr. McKenna.—What I want to know is this: We had Dr. Hecht on the stand, who testified there was a well known and defined proceeding in the Church whereby a priest aggrieved by the Bishop could commence a complaint, and could cite the Bishop before the Archbishop, and that the parties would then, if the Bishop filed his answer, have a hearing on the matter, and then if it was decided either party could still appeal from the decision of the Archbishop to Rome. Do you know of any such thing—any such court even in extra judicial matters?

A. No, sir; and another fact is this that the Archbishop has no authority at all over the Bishop, unless when he visits the Bishop of the diocese, except on regular appeal or when he appeals to the Archbishop for some impending evil he thinks he is going to do, and then the Bishop cannot proceed until he has summoned the priest before him.

Q. Do you think that no extra judicial appeals will lie?

A. I say that they are not appeals properly called.

Q. You deny that such appeals will lie?

A. I say that an extra judicial appeal is no appeal, properly speaking. It is a simple remedy. A note of the priest stating his grievances, and he can do that even to the Pope, and they will see to that.

Q. Cannot they state it to the Archbishop?

A. The Archbishop may say this case is not properly before my tribunal.

Q. Suppose it is there properly? A. It cannot be.

Q. It would be extrajudicial? A. He has no jurisdiction.

Q. Isn't there a well defined form of complaint or action against the Bishop in an extrajudicial manner requiring the Archbishop to give a citation to the Bishop of the fact that such a claim has been presented to him, and that he be required on or before a certain day to answer or the remedy or redress solicited by the alleged injured priest will be granted. Is not the Bishop in response to that citation pledged by his duty to his superiors to appear before them?

A. I never saw a book, or the law.

Q. Do you know whether the laws of the Church provide that remedy? A. I don't, sir, I don't think they do, sir.

Q. Do you say now, sir, that simply because you have not seen them that no such laws exist?

A. I can't say that, sir. It might exist and I never have heard of it.

Q. I am not asking you whether you have seen it, I am asking you whether you know that the canon law allows such a thing in this country? A. I don't know.

By the Court to Mr. M'Kenna.—I understand you in your testimony that the priest might present a petition to the Archbishop and that the Archbishop might cite the Bishop to answer, but that it was not such a right as would compel the Bishop to act, that it was optional with him, and if he refused to act, then the party aggrieved might present his petition to Rome, in the same way, and that the complaint to the Archbishop or a complaint to Rome could only be heard as a matter of grace and not as a matter of right. I understood that to be Dr. Hecht's testimony?

By Mr. McKenna to the Court.—I did not understand Dr. Hecht to qualify his right to appeal to Rome.

By Mr. Watterson to the Witness.—Is the refusal of a mission synonymous with a judicial sentence? A. It is not.

Q. There is no decision at all?

A. It is not a decision; a decision is an authoritative opinion expressed after hearing of the evidence.

Q. Can any Bishop take away any office under any possible circumstances except after a trial? A. No, sir.

Q. The penalty is merely a suspension from order?

A. That is it, no more and no less; all the rest is the common law of the Church. There is an extrajudicial form laid down by

the Council of Trent, and with that exception everything else is a common law of trial.

Adjourned until Tuesday, May 3d, 1881, at 2 o'clock, P. M.

And now, to-wit, Tuesday, May 3rd, 1881, parties met pursuant to adjournment of Monday, May 2nd.

REV. FATHER NOLAN recalled on behalf of plaintiff, and examination continued by Mr. Watterson.

Letter of January 31st, 1878, handed to witness.

Q. In the signature of Cardinal Franchi is that "Praes." or "Prefectus?"

A. It is an abbreviation; now that part—referring to letter—would be either "Praes." or "Prefectus", and "Praes." is quite a different thing from the Prefect of the Propaganda. Cardinal Simoni is the Prefect of the Propaganda and but one of the members of the congregation, but he is not the president of it.

Q. Is not Cardinal Di Pietro the president of that congregation? A. Yes, sir.

By the Court.—Q. Is the letter signed at the bottom in his official capacity? A. Yes, sir.

Q. What is his official capacity?

A. Prefect of the Propaganda.

By Father Sheehan.—Has he legislative authority?

A. He has not.

Q. Only administrative? A. That is all.

Q. Only a member of the Court when it is called?

A. That is all.

Q. And a very small member?

A. He is one, a single member.

Q. There is always a president, distinct from the prefect, a general executive officer when they meet? A. Yes, sir.

Q. That is when they constitute a court for trial? A. Yes, sir.

The plaintiff states that he is entirely satisfied with the copy of the letter, with the exception of the contraction of the title of his office. Letters marked Ex. No. 1, May 3rd, 1881, and Ex. No. 2, May 3rd, 1881, W. A. S., Reporter, being the copies produced by the defendant as an exact copy of the original letters and admitted

to be such by the plaintiff, except that there is an F or T added to the title. Letters marked Exs. Nos. 3 and 4, May 3rd, 1881, offered by the defendant as the correct translation of the same.

DR. QUIGLEY recalled.

By Mr. McKenna.—Q. You can state whether those are fair and correct translations according to your judgment?

A. To the best of my ability those translations are correct and full so far as the originals relate to the matter under consideration.

Q. They were made by you?

A. Yes, sir, I made the translations.

Q. As well as the copy of the original?

A. As well as the copies of the originals.

REV. FATHER NOLAN recalled:

Examination by Mr. Watterson.

Q. Father Nolan, is the statement of the distinguished gentleman, who testified for the defense, that because there are no benefices in this country a Bishop is bound only in charity to support a priest who—

Objected to

By the Court.—Admitted.

A. I answer that question by stating that it is false in point of law, and it is a silly question, unfounded in fact and untrue in every particular, because there are no benefices in this country. That is equivalent to refusing a priest his support. A priest has a right to his support where he does his duty or offers to do his duty, and that right does not come from charity, but from justice.

Q With regard to the section of the laws of Baltimore, quoted by Dr. Quigley, sec. No. 90, on which he founded his opinion, is it true that the Bishop is bound only in charity to support a priest in this country? A. It is not true.

Q. Is he bound in justice to do so? A. He is.

Q. I wish you would take the law of Baltimore, section No. 90, and tell me if that is not merely a mutual insurance company, what does that section of the law of Baltimore mean?

A. I will translate it, giving it a literal translation: "In order that priests may not be compelled, to the great disgrace of their Order, to beg or to be in want, we exhort the bishops to admonish the faithful under their charge of the duty incumbent on them of supporting, of giving a suitable support to those priests, to the priests especially who are worthy, but who, through sickness or through some other accident, they be not able to discharge their duty, and so that affliction might not be added to their affliction, let them take care that there be afforded such priests such support or assistance as they may deem necessary. And that this assistance should be afforded by the faithful, but if the congregation of the priest who was sick or otherwise disabled served be so poor as not to afford means or support of this kind, we exhort the bishops that by the best means in their power they may excite the other priests and faithful to afford them, to show them, charity; but we greatly desire that in every diocese the bishops, as soon as they possibly could, having taken the advice and the counsel of the priests, and assisted by the priest, they should enact or determine some certain method—certain and fixed method by which provision should be made for sick or old priests, or for priests otherwise disabled. But unworthy priests, or those who refuse to obey the legitimate authority of their Bishop, or who refuse to contribute money to this general fund." That is, I suppose, where the insurance company comes in. "We do wish that this decree should be made of no benefit." It appears from this, your Honor, that this seems to be a way that the Council of Baltimore hit upon of making provisions for the support of priests that contributions should be taken up in the diocese, and then if the congregation be so poor as to be unable to contribute anything over and above the priest's salary, that then the Bishop should determine some other way, the best they could, to excite the charity of the priest and the faithful.

By Mr. McKenna.—Is not that fund a charity fund?

A. From the people and faithful, decidedly. That is the meaning of it. The portion given by the faithful is charity; that contributed by the priest is not. I don't see that there is much charity in living on means contributed by yourself.

By Father Sheehan.—Is there such a fund in this diocese?

A. I don't think so; I believe there is a Clerical Relief Association exclusively among the members and the funds derived from

the members of it, but there is no collection ever taken up for the support of priests.

By Mr. Watterson.—Does that law take away or supercede the obligation of the Bishop to support the priest?

A. No, sir; it cannot supercede it at all.

Q. It is merely in your opinion, then, to aid the Bishop?

Objected to.

Witness' attention is directed to the acts and decrees of the Second Plenary Council of Baltimore, page cxxxix, paragraph 15.

Q. Please translate that?

A. "Whereas the most eminent Fathers have diligently examined the addition which the Bishop of Ft. Wayne considered ought to be inserted in the text, No. 347, concerning the right of missionaries acquired from the title and ordination, and also concerning the manner of satisfying these rights and fulfilling these obligations or rights, they had been unwilling, or did not admit his opinion about the matter, yet it is their will that by this letter some satisfaction for the support of poor priests, insinuated by the Bishop of Fort Wayne, should be recommended to your honor and to the other Bishops."

Q. Do you know what that proposition was, Father Nolan?

A. The proposition of the Bishop of Fort Wayne, in order for the support of sick priests ordained to the title of mission, and of which we have spoken in a former paragraph, was this: "The ordinaries of the place, or Bishop of the place in which the priest at that time happened to live, should require a certain annual stipend sufficient for the support of the priest from those congregations in which the same priests have labored, and should distribute that to the priests at stated times, but since it is rarely, we fear, that this provision be either sufficient, or could not be easily put into execution, we therefore decree that by means of the Bishops a certain special fund may be set apart from taxes levied on each congregation of the diocese, *pro rata*, and to be imposed *pro rata*, and equally by means of which the priests, of whom we are talking, can have suitable sustenance, and the manner of collecting and administering this fund is left to the regulation of the respective diocese Bishops. The aforesaid priests who receive this support have perfect liberty of using the money received in the aforesaid manner wherever it pleases them to dwell, provided, however, in all respects they con-

duct themselves as priests. Moreover, from that fund, in the judgment of the Bishop, even those priests can be supported, at least in some manner, who, although they were recently, or shortly before, unworthy, but of whom there are yet some hopes for reformation." That is, not only sick priests may be supported, but also support priests who have recently badly conducted themselves, and of whose reformation there is still hope." This last is a foot note found on page 140.

Q. That was a proposition which the Bishop of Fort Wayne wanted to enact, and which the Congregation of the Propaganda rejected? A. Yes, sir:

By Mr. McKenna.—Who is the foot note by?

A. It is a proposition made by the Bishop of Fort Wayne in the Council of Baltimore, and rejected by the Propaganda.

By Mr. Watterson.—Wasn't that proposition rejected by the Propaganda?

A. Well, in the sense that they did not admit it, but the literal translation of it is: "Whose opinion, however, indeed they were unwilling to admit—whose sentence or decision about the matter—the decision or regulation." The Bishop of Fort Wayne made the proposition, and the Propaganda, in general meeting, revised this book and corrected it, and they gave the opinion that I have read to you.

By Mr. McKenna.—It is only a recommendation?

A. No, sir; he proposed it should be inserted in No. 347 as part of the law, and the Cardinal Prefect would not admit that.

By Mr. Watterson.—In other words they wouldn't admit the rights acquired to be taken away?

A. There are two items in it. Here are the reasons: "When the most eminent fathers, or when those, or when they, diligently considered the addition which the Bishop of Fort Wayne proposed to be inserted at No. 347 concerning the rights of missionaries acquired from their title of ordination, and likewise concerning the method of satisfying these rights, they—that is, the most eminent fathers—had been unwilling, indeed, to admit that opinion—that is, the opinion of the Bishop of Fort Wayne."

By Mr. McKenna.—There is nothing there to waive a right. Was there anything in that to take away their rights?

A. Take whose rights?

Q. The priests—the rights of ordination?

A. Certainly not. They laid it down for where priests were ordained under the title of mission had rights, and they wanted to enquire how those rights could be satisfied. There is two things concerning the rights acquired from ordination, and the proper method of seeing that these rights were—

Q. But you do not answer the question. The proposition of the Bishop of Fort Wayne didn't propose to deprive them of any rights that the priests had, it was not to allow them any additional rights, it was merely a supplementary provision, was it not?

A. Yes, sir. Recognizing those acquired, and this accommodation was intended to adopt some means or method by which the obligations of the Bishops should be fulfilled and the rights acquired by the priests should also be fulfilled.

Q. You say the proposition of the Bishop says that? .

A. That is the substance of it, I think.

Q. That is not in your translation of it; it provides for superannuated priests?

A. This refers to priests who are unable to labor on the mission, and also added that the fund so collected could be applied to other sources, if the Bishop so wished; viz, to priests who recently contracted bad habits or rendered themselves unworthy, or to those of whose reformation there is some hope in the near future; the Bishops shall, or they may, apply this fund for the support of these, too, but it is for the support of superannuated priests in the discharge of their duty.

By Mr. Watterson.—Q. Father Nolan, do these provisions of charity take away the support of priests acquired by the title of mission? A. They do not.

Q. What is the practice of the Papal Court with regard to appeals made by priests complaining that they do not receive competent support from their Bishops?

A. Well, in the sense of ecclesiastical law or book ruling giving down the decisions of the higher tribunals, I find several instances touching that matter, and one decided not very long ago by the highest ecclesiastical court, and that is to have it referred to a supreme council or court, because they have the highest authority and are never reversed, and because in all matters they are made by the Holy See.

Their decisions are that we stand to what we have decided, and do not consider a case again until there are some formalities observed before it can be brought again. I saw in that book, in D. Craisson, laid down in the canon law of the priests the case of a priest who was ordained to the title of Patrimony, his own general source of living, and the diocese was not obliged to support him. He happened to be a professor in a diocesan seminary, and the salary given him there was insufficient for his support, and he wished to leave that diocese and go to another, and manifested his intention to the Bishop. The Bishop, not wishing to be deprived of his services, forbade him under pain of suspension *ipso facto* incurred not to leave the diocese, and notwithstanding that threat he went away, and he proposed this doubt to the congregation of the Council of the Propaganda: First of all, is a priest ordained under the title of Patrimony, as he described, bound to obey the Bishop, to go back to the diocese? number one. Was the suspension validly incurred? number two. Now the Supreme Court heard this case and decided it. Now their answer to the first point is this: The aforesaid priest is bound to go back, provided however, the Bishop gives him a decent support, a permanent support. That is the rule, and even he was not ordained under the title of Mission, who has a right, by his ordination and title; but he was a priest ordained under the title of Patrimony, for which it was not bound in any way.

Q. What was the decision under the second point?

A. It was decided that he incurred suspension. I should say in that case, your Honor, that it is the law of nature proved simply from the first proceeding, and don't receive any sanction of the Church, but the Church takes notice of it, that whoever works, whoever labors, shall be supported. That is the custom of St. Paul, and every clergyman laboring in the diocese has a right to support, and the right comes from different sources. If the right comes from the patrimony, you are not bound to duty in your diocese, excepting in a general way at Christmas and Easter time, and in the case of a scarcity of priests to give assistance. You are bound, because you are a clergyman, to do so. Then if you had a benefice, that means a certain office, a stable and permanent means of support appointed by the Church, to which are attached duties and obligations of the ministry. But here you have neither. All you have is the title of



mission. You are not ordained as a pastor, nor as Vicar-General, nor as a canon in a Cathedral Church. You have only one title, that is of mission, and the Holy See which imposes this title says that whenever a man lays aside this office of missionary priest he loses his title, that is, his support until he gets another title, and that this right of support, as arising from the ordination, is not, as I think some learned lawyers think it, attached to the congregation. That is altogether unknown to the Roman authorities, that is, as to the congregations, that is a distinctly ecclesiastical arrangement made by the Bishop for his own convenience, but it is attached to the diocese, and this is so proved that you will find it there in the Council of Baltimore, in that opening part of it, where the Cardinal prefect is explaining the title of mission to the Bishop here, which says that if a priest ordained under the title of mission leaves one diocese and goes into another, he has a right and he must get a new title in that diocese. So that the means of support are not to come from any particular parish, but from the Bishop or officers of the diocese, because, when the Bishop is consecrated, the Pope confers upon him all the temporalities and spiritualities of the diocese.

Q. *By the Court.*—Wherever the diocese is liable the Bishop is liable?

A. Yes, sir; in canon law he is the agent and representative of the diocese.

Q. *By Mr. Watterson.*—There is a way then of a Bishop getting rid of his liabilities by a priest being affiliated in another diocese?

A. Yes, sir; no priest can leave the diocese under any consideration whatever and attach himself to another, unless first of all he has dimissorial letters from the Bishop of his diocese of his ordination, and who shall not give him such leave until he has the knowledge that he is to be accepted and lawfully affiliated to some other diocese, and there is no other method known to the Catholic Church by which a priest ordained to the diocese can be deprived of his right to live in the diocese except in that one way.

Q. Tell me if that is the law of the Council of Baltimore, and give the page and number.

A. The Second Plenary Council of Baltimore, page 75, chapter 4 and paragraph 109. "We enact and declare that every priest who may have been ordained—who has been ordained—for any dio-

cese of this province, is bound, by virtue of the promise made in his ordination, to remain in that same diocese and to obey his Bishop until he shall have been canonically dismissed," and then it goes on, "we also enact that every priest rightly affiliated into any diocese is bound by the same obligation; and we declare a priest coming from another diocese to be rightly affiliated as soon as he shall have exhibited his testimonials and *dimissorials* of the Bishop to whom he was lately subject, and to remain in the diocese in which he wishes to be received, and when these testimonials and *dimissorials* are so received by the same Bishop perpetuates."

Q. That is the only way in this country known in which a priest can leave a diocese?

A. No, sir; there is no another way known.

Q. Canonically?

A. You have no rights until all those formalities be complied with, he holds his title in that diocese and it is the only known way of severing his connection with that diocese, to get the Bishop's *exeat* or *dimissorial* and have them accepted by another Bishop, perpetually, as though he had been ordained.

Q. Can these letters *dimissorial*, or technically the *exeat*, can they be forced on the priest? A. No, sir.

Q. Do you know if that has been decided that way?

A. Decided.

By Mr. McKenna.—Where?

A. You cannot be forced to leave a diocese excepting for crime, and you cannot be forced that way as the man may lose the title of mission. There is one way of losing it in the diocese, as I say, and that is by taking letters *dimissorial* and subjecting yourself to another Bishop. That is one way. The second way is if you are excommunicated; but that does not take away your office, nor will any other cause take away the office, but if you are clearly guilty of such incorrigibility as to render yourself liable and you have had a trial according to common law of the Church and convicted by the Bishop, then he can deprive you of your title, because it is common sense and canon law, and everything else that the man who renders himself unworthy of the office which he holds shall have no right to his support.

By Mr. Watterson.—Supposing a priest is willing to render actual service and the Bishop will not permit him?

A. Well, I answered that question. Either the priest was a priest of the diocese in good standing or he had been away temporarily or he was a strange priest and not received in good standing.

Q. Suppose he is willing to render actual service and the Bishop will not permit him, is the Bishop not bound for his support?

A. Certainly he is; I base that on the fact of his ordination, subject to St. Alphonsus. If he is a priest in good standing—and every man is in good standing until he is in bad standing, for it is as good in canon law as in American law that no man is presumed to be bad, he must be proved so.

Q. Is there any way of a person being fully approved in this diocese?

A. There is. Every priest ordained in this diocese is considered merely as a probationer, on probation for five years, and he must annually, for five years, pass an examination before the synodical examiners of the Bishop, in theology and other studies; and the presumption also is that among the curriculum of studies is the canon law, which, by the way, I suppose is studied; and if he passes five examinations to the satisfaction of the examiners he is considered then to be fully approved, and he has the faculties of the diocese until they are revoked for cause.

Q. A fully approved priest is in good standing?

A. Why, even if he is not fully approved he is presumed to be in good standing. Every man is presumed to be so until he is convicted of crime, and the presumption is always in a man's favor.

Q. Is it true that when a priest is absent from the diocese and he returns that the Bishop is not bound to give him a mission or give him support until he is satisfied that he is possessed of all the requisitions of a priest, and that he is not only free from vice but a man of positive virtue?

A. It is not true that a priest is bound to make an exhibition of his virtues like that and prove himself a saint. The presumption is always in his favor. It is the Bishop's business if he sees he is wrong, or sees he does any wrong, to bring that man before his tribunal, and if he should have done so he has a perfect right to refuse, and the priest's proceedings are, if the sentence was wrong, by the law of the Catholic Church, to appeal to the Archbishop, and if not satisfied with that to the Propaganda in Rome.

Q. Is there any limit to a leave of absence granted by a Bishop so long as it is not perpetual?

A. No, sir; the priest cannot be authorized to leave the diocese perpetually, because the Bishop has imposed that oath and he has no right to dispense with it. However, it is optional with him for reasons that are satisfactory that he may say to him, I give you permission to stay away for two or three years, provided it be not perpetual, and at the expiration of that time he may renew the permission of absence, and that is all right, provided always, that the diocese does not suffer from the absence of the priest; but there is no specified time, no limited time, for the absence of the priest. If the Bishop is willing to give five, six or ten years, or whatever he pleases, he can do so, provided it is not perpetual, and provided no injury results to the diocese from the absence of said priest, for in that case the Bishop has charge of his office and is bound to see that religion sustains no injury by his own act.

Q. Is it necessary for the priest to make a formal demand for support after he has asked him for clerical duty in the diocese?

A. No, sir; the formal demand for clerical duty implies the other. When a man asks for work he has the right to presume the right of support is included therein.

Q. Could the Bishop suspend upon statements made to him, on those statements, without a trial?

A. Suspend from office without trial.

Q. Without trial?

A. Barbarous. No, sir. There is probably a good deal of ignorance existing in the minds of the subject about this question. A Bishop cannot extra judicially take away any man's office. All he can do is this: He can suspend you from the lawful exercise of your office, even extra judicially, but he cannot do that as a Bishop. He is acting as a delegate of the Pope by the authority continued to him or given him by virtue of the 14th section of the Council of Trent, and with that exception everything else in the Church is according to law.

Q. He gets that at the time of his consecration?

A. He does not. If he was not consecrated at all he would have the power. It is not the common law of the Catholic Church, and for 1,540 years it was unknown, to give any man a right to

suspend a man without a fair trial, but he can do it now on account of the Council of Trent.

Q. I wish you would state what that book is in your hand?

A. Notes on the Second Plenary Council of Baltimore, by the Rev. Dr. Smith.

Q. Do you know of there being anything written against that book, in reply to that work? Objected to.

By Council for Plaintiff.—The object is to impeach Dr. Quigley's testimony with regard to that book.

Q. Do you think a man would be excommunicated for reading that book?

A. He would be an idiot who says so.

Q. He would be an idiot who says so? A. Yes, sir.

Q. As you were speaking of the subject of suspension *ex informata conscientia*, I wish you would read what that book states here, and tell us if it is correct in your judgment?

A. Now what means the phrase *ex informata conscientia*? Pope Benedict XIV. casually explaining this point, says: "That when the Bishop knows an occult crime, whether altogether outside of the ordinary forms of judicature—extra judiciality—or in any other way whatever, *quomodo libet*, he may either refuse giving holy orders or suspend the delinquent from the exercise of an order already received." From this we draw the following conclusions: The phrase *ex informata conscientia* means simply an information gained privately in any manner whatever outside of the ordinary course of trial or judicial proceedings. Suspension, therefore, *ex informata conscientia*, signifies the censure inflicted by the Bishop, not upon the verdict or decision arrived at by a public trial, but upon incontrovertible private information. Second; Suspension *ex informata conscientia*, that is, inflicting the censure without observing any forms of legal proceeding in the investigation of a cause and its decision, but acting from a private knowledge of the crime, is not contemplated in or even implicitly sanctioned by the common law. It is therefore an exception to the ordinary rule. Third: It merely applies to occult crime. Fourth: The private knowledge or information of the Bishop must not be founded on mere conjecture, but upon moral certainty. Nor is it sufficient that an accusation should be brought before the Bishop by a few hot-headed and factious parishioners, who are but too frequently dis-

posed to grumble at everything done by the parish priest. An indubitable and certain information is essential. Fifth: Even in regard to occult crimes this mode of procedure should be adopted only when scandal to the faithful or matter of triumph to the heretics and serious injury to the Church would be the result of an ordinary trial. Sixth: This judicatory, therefore, of private information does not apply to all cases. Bishops who extend it to all crimes, making it the ordinary rule of action instead of the exception, grievously offend against the common law of the Church, as was decided by Benedict XIV. Seventh: The Bishops of America, consequently, are bound to observe the decree of the Council of St. Louis, which is sanctioned by the Holy See, and which provides for a fair trial to be conducted by the Bishop or Vicar General and two priests selected by them so that the defendant or accused may have a chance of defending himself, and if need be of appealing to the Metropolitan." That portion, as I said yesterday, is superceded by the new instructions as far as the trial is concerned. "As long as the above decree is not enforced and complied with by the prelates of this country, every priest must be at the mercy and caprice of his Bishop, and, practically speaking, little, if any, protection against slander and injustice is left him."

Q. This is Mr. Smith's notes, comments?

A. Yes, sir. All these conclusions have been deduced from what Pope Benedict XIV. says.

By Mr. Watterson.—I want to ask the gentleman if that is his impression also, if that is correct, if that is his idea also? Is that the law of the Catholic Church in this country, what you have read, the principles embodied there? A. Yes, sir.

Q. Are they found in this summary process of the Council of Trent; they cannot take away a man's office?

A. No, sir. You can prohibit under pain of a sentence from exercising the ministry, but you cannot take away the office at all. If this be taken away simply, that is what is called in canon law driving or dismissing you out of the diocese altogether, and that can only be on trial for a grave crime.

Q. When the Bishop proceeds in this way must he not state formally that he proceeds by virtue of the Council of Trent?

A. Yes, sir. And the reason for this is, if he did not mention that, he would be considered proceeding in the ordinary way, and

that is by giving trial, and no Bishop can suspend a man unless in this extra judicial way, excepting after trial. Of course he can do so extra judicially by this doctrine. (Book handed witness.)

Q. Tell me what that work is ?

A. This is "Koning's Compendium of Moral Theology."

Q. I wish you would turn to page 324, second volume, and translate that section ?

A. "The different kinds of suspension are the following : Suspension *ex informata conscientia*, out of the faculty given Bishops and to prelates invested with *quasi* Episcopal jurisdiction of interdicting their clerics from the Ecclesiastical dignity which, however, most probably cannot be extended to benefices formed in law, because as to the nature of the matter and all the contents of the work of the Council of Trent require a trial of every man which is left to the Bishop, even on account of some occult crime in any way extra judicially." On the origin of this see, Council of Trent, session 14, chapter 1, Reform Anal. J. P., Serie 7, Col. 575. "It appears from what has been said, this suspension acquires no solemnity, yet it must be expressly stated that the Bishop acts in accordance with the Council of Trent, lest it might be thought he proceeded in his ordinary way in which the solemnities are necessary."

Q. He is obliged then to state that he proceeds in virtue of this Council of Trent ?

A. Yes, sir; the book states so ; I state what the book states.

Q. If a priest be suspended either *ex informata conscientia* or without a trial, or after trial even, does he lose his benefice or office of parish priest ?

A. You put two questions there ; the first one, if a priest be suspended *ex informata conscientia*, does he lose his office ?

A. No, sir.

Q. You mean then to say he loses it under no circumstances ?

A. No, sir ; look at the book and look at the Council of Trent ; the Council of Trent says that he is suspended from his order and from his ecclesiastical dignities, but it does not say from his office, and the rule of law is that in all things odious you must give a strict construction.

By Mr. M'Kenna.—Q. Can you refer to your quotation ? [Book handed witness, and his attention called to Session 14, chapter 1st.]

A. It is hard to translate this. I must confess that I consider this very difficult, and I will submit my translation to more learned men lest I might not be entirely correct in it. The 1st chapter of the 14th session concerning the Reformation. The heading of it is, "If those prohibited to ascend to orders, should they be interdicted or suspended, nevertheless let them be punished. Inasmuch as it is more becoming and safer for a subject by showing to those set over him the obedience due to them to serve in a lower order than to covet the dignity of higher grades to the scandal of those set over him, let him who has ascended to sacred orders shall be interdicted by his own prelate for any cause whatever, even on account of any actual crime, in any matter whatever, even extra judicially, but who shall be suspended from his orders or grades or ecclesiastical dignities know these things granted against the will of his prelate by getting himself promoted, shall avail as a restitution unto his former orders, grades and dignities." There is no word of benefice or office. It is orders, grades and dignities.

By Mr. McKenna.—Q. What year was that passed in?

A. What particular year the 14th session was held in I can't say now; about 1540, or thereabouts. I don't say that as being correct chronology.

Q. That is the only law known in the Catholic Church for a summary process? A. That is the only law.

Q. Will you repeat this translation?

A. Well, I will read it: "Inasmuch as, whereas, it is more becoming and safe for the subject, by showing to his superiors the obedience due to them, to serve in a lower order than with the scandal of those set over him." Well, *appetere*—covet, is the better word, but it does not fully cover the meaning; it means to hanker after, to long for, "to covet the dignity of higher orders. Now him to ascend to sacred orders, his being prohibited by his prelate on account of any cause whatever, on account of actual crime in any way, even extrajudicially, or who may have been suspended from his orders or grades or ecclesiastical dignity, no promotion granted that man against the will of his Bishop, getting himself promoted to higher orders, shall avail him as a restitution of his former orders, grades and dignities."

By Mr. Watterson.—Now what are the two things by that law a Bishop cannot prohibit, and nothing else?

A. He cannot take away your benefice, and he cannot take away your office. He can suspend a man without giving him any reason whatever, and from your suspension there is no appeal to the Archbishop or Pope. You have only to go there; only a complaint to go there and ask him to write to the Bishop and compel the Bishop to state to the Archbishop, or to the Congregation of the Propaganda, what is the reason why he has suspended, as I stated yesterday, and it is to be also noticed that though this gives the Bishop this power it does not necessarily force the Bishop to violate all forms of common law, because even if he suspends a man extra judicially, by virtue of his power, he can use some or all the forms, he can use the form of a summary judgment also; and then it is also held by canonists, that the Bishop cannot suspend you in this summary, extra judicial way, by the Council of Trent, except for a given crime, and the reason seems to be this: if the crime be public the Bishop can take cognizance, on account of its publicity, and there should be no recourse to a judicial remedy so long as any other remedy is at hand; also, the crime should be of the things spoken of, as this affects only those who have committed violence, that suspension is irregular and he commits a sin in violating it, and he is bound, under the pain of mortal sin, to exercise his office. That is the duties of his profession, but it does not in any manner or form take away that man's right to a living. If you say, well he cannot do his duty here, why should he be paid for it, that happens only indirectly, though a man be not allowed according to law to do those duties, he has the privilege to enter a monastery and remain until this thing is settled by appeal to a higher authority.

Q. What length of time can a Bishop, under that law, suspend one?

A. Well, so far as I am concerned, I cannot say, but the teaching of canonists say six months; it ought not to be longer than six months.

Q. Can he, at the end of six months, suspend for six months more, or make suspension indefinite?

A. Barbarous! No, sir.

Q. In other words, that would be punishing him twice for the same crime? A. Not twice, but forever.

Q. Must not all ecclesiastical cases be tried, in the first instance, by the Bishop of the diocese?

A. Yes, sir, that is his privilege and his right, consequently if it is a right it is his duty. (Another book shown to witness.) Well, I said that all these cases should, in the first instance, be tried by the Bishop. That is what is here "Suffice it to say here, that all causes belonging in any way whatever to the ecclesiastical forum, even though they be *causæ beneficales, matrimoniales* or *criminales*, are to be taken cognizance of in the first instance by the ordinaries of places," that is, the Bishop, and refers to 188 in the place above cited and the twenty-fourth session of the Council of Trent.

Q. What book are you reading from?

A. I am reading "The Elements of Ecclesiastical Law," by Dr. Smith.

Q. What is the page? A. Page 295 and No. 569.

Q. Do you know what is the reason that this work was submitted to the Roman Examiners?

A. I believe some man found fault with his teaching. I have a little pamphlet where he is thoroughly hauled over the coals, and has replied to the animadversions made on his doctrines, which were simply crushing.

Q. Who was the person who wrote against that?

A. Well, Counterpoints in Canon Law, a reply to the pamphlet "Points in Canon Law," and to the "American Catholic Quarterly Review" of October, 1878, by Rev. Dr. Smith.

Q. I say, who called that work of Dr. Smith's in question? Can you tell me?

A. The Rev. Dr. Quigley, if I am not mistaken.

Q. Was that book submitted to Rome?

A. Which book, the "Elements?"

Q. Yes, sir.

A. The Cardinal Prefect submitted it to the correction and revision of the eminent canonists in Rome, and with some corrections which he has made in the second edition here, the book is approved.

By the Court.—This edition is approved? A. It is approved.

By Mr. Wattersqn. There are no obstacles to its publication?

A. No, sir.

By the Court.—That is recognized, is it?

A. Yes, sir; this is authority approved by the eminent theologians in Rome, to whom the examination of this book was referred.

By Mr. Watterson.—Can there be a court of appeal in the second instance when there is no court in the first instance, no bishop's court? A. There cannot.

Q. Nothing to appeal from?

A. No, sir. The word appeal implies that there has been a sentence, a definite sentence pronounced by the inferior court, and it is submitted to the higher court for supervision and correction.

Q. Besides the contract or title of mission, is there not also a transfer of guaranteed support?

A. Well, if you mean there is a regular document drawn up same as you give a mortgage to a man, there is not, but that is all implied when you are a subject—it is antecedent to your ordination. It is a mistake that the man is entitled to support when he is ordained.

Q. Whether he works or not?

A. That is not the idea. The ground of support does not come from the work, because if a man was unable to work in old age he would have no right of support. It depends upon this fact, that you give up the world and take the vow of chastity. You agree to carry out the laws of the Church under the direction of the Pope, and to obey him and to remain there as long as you live. Of course the Bishop cannot afford to pay a man without employment—you see one implies the other. It is the same, but it is not exactly, for what can a sub-deacon do? He cannot do anything but some menial employment.

Q. Still it is antecedent to his being sub-deacon?

A. Certainly, he takes the oath of obedience to his Bishop. This oath of serving the diocese is imposed before he is ordained as a sub-deacon, and it is in consideration of giving up the world and devoting yourself entirely to the work of the ministry under the government and direction of the Bishop in that diocese is the only motive that gives it to you, and the only ground that you have.

Q. So that all a priest has to do is to devote himself?

A. Or offer to devote himself. The Bishop may not avail himself of your services if he don't want them. As I said yesterday he can employ you if he chooses.

Q. Are not the words *qui sese devovent* in his title?

A. For the devoting of themselves, or giving of themselves up.

Q. Does that mean the same as *qui servant*?

A. The very same: "Who devote themselves to the service of the mission," and the mission may be served by teaching the catechism or some other employment, which, by the way, is a very high order of missionary work, and the Bishop may elect to employ them at it.

Q. When this oath or vow is taken is not the act then complete?

A. It is complete.

Q. He gets that when he is ordained subdeacon?

A. Yes, sir; I said that last January.

Cross-examination by Mr. McKenna.

Q. Father Nolan, where were you born? A. In Ireland.

Q. What is your age now?

A. I think I am going on 47 years.

Q. How long have you been ordained?

A. I was ordained in the year 1859.

Q. In Pittsburgh?

A. I was ordained with minor orders and subdeacon in Pittsburgh. I was ordained by Archbishop Purcell of Cincinnati, in his Cathedral for this district.

Q. Where did you commence your studies?

To the Court.—Am I bound to answer these questions?

By the Court.—The examination is proper cross-examination.

A. I commenced my studies in a boarding school in the city of Waterford, Ireland.

Q. What college did you go to next?

A. I went to a college in Waterford.

Q. How long were you there? A. About a year and a half.

Q. What did you study?

A. I studied the higher classics—different authors.

Q. The higher classical studies?

A. Yes, sir; the ancient histories and Greek.

Q. I want to know, Father Nolan, where you studied theology?

A. Well, I studied theology in *Barlow* College.

Q. How long?

A. I think two years, and then I was in Genoa.

Q. How long were you in Genoa?

A. I don't remember how long I was there; I don't know, less than a year.

Q. What college in this country?

A. St. Michael's Seminary, Pittsburgh.

Q. Did you study theology there for a year?

A. Not for a year, not quite, and then I went to Cincinnati.

Q. How long did you pursue your studies there, I mean in theology?

A. I think I went there in September, and I was ordained a priest in the following July, that is, if my memory serves me now, on the 9th day of July, '59.

Q. What is the ordinary course prescribed in the Catholic Church for the study of theology before ordination?

A. The ordinary course?

Q. Yes, sir; how long, how many years?

A. That depends; some colleges three years, some four and some two.

By Mr. Watterson.—Q. It depends upon a man's ability?

A. No, it depends probably on the needs of the mission.

By Mr. McKenna.—Q. Do they pursue a course of scientific study in college? A. Yes, sir.

Q. Now, in the study of theology, is there a special study made of canon law?

A. No, sir; excepting in the Dunboine establishment of Maynooth College, and that, I understand, is one of the subjects to which they devote particular attention, and in the Italian colleges they study it, study it some.

Q. In this country, I presume, as a general thing they do not pursue canon law as a separate branch?

A. I think they do not, sir. I don't think they ever studied canon law out at St. Michael's Seminary, Pittsburgh, and furthermore, when I was at Cincinnati, I never attended a class of canon law for the simple reason no such thing was taught there.

Q. So that what knowledge you possess is derived from what you have learned since you left college?

A. I may say, wholly.

Q. Since your ordination you have been engaged in a mission of the diocese? A. Pretty much.

Q. Actively engaged? A. Yes, sir.

Q. Would you please enumerate the various places at which you have been stationed?

A. I cannot remember them all.

Q. Have you had two or three parishes under your control at a time, two or three missions.

A. Yes, sir; when I was out in little Washington I had two counties. I was there about a year and a half, and I had both counties, Washington and Greene. In other places I have attended to duties in detached places, but as a rule I have had only one church; some places, I said, I have had two.

Q. You stated in your examination previously that, while you would not consider yourself an expert, you had paid considerable attention to canon law.

A. I remember that, sir.

Q. Would you please enumerate the authors you have read?

A. Well, I have read Corpus Juris Canonici pretty closely, often consulted it for reference to verify quotations from the books; and I have read some tracts, and I have studied some of the—

Q. And Koning, I suppose?

A. Well, sir, he is a very good author; and Craisson.

Q. Is Craisson recognized as an authority?

A. Oh, yes, sir; he has received a complimentary letter from Pius X.

Q. Well, name some of the other standard authors you are familiar with and have read?

A. Well, I have from time to time consulted Reiffenstuel and also Schmalzgruber, and I must say that I have studied this little book, which is a very valuable book and a most valuable contribution to canonical literature in this country, "Counterpoints in Canon Law."

Q. By whom?

A. By Dr. Smith, and the notes of Dr. Smith and his Elements, the first and second editions, and I have probably looked into other books of canon law. I believe in the axiom, *Timeo hominem unius libri*.

Q. Then you have read a great variety?

A. No, sir; I don't say that. I have consulted some of these I have stated and studied others.

Q. Is Bouix considered an authority?

A. Yes, sir; he is a good writer, a French writer.

Q. What I mean by reading a book is, did you make a study of that book, can you say you studied the book?

A. No, sir; I don't say that; however, since you have put me in mind of it, I have consulted it.

Q. Consulting is one thing and reading is another. Did you consult it for a special purpose? A. Yes, sir.

Q. Didn't study it? A. No, sir.

Q. Did you digest well what you have read?

A. The great thing is to get the correct principles. If you have the correct principles it is very easy to apply them.

Q. Father Nolan, I wish you would state whether the Catholic Church, as a society, has a Constitution or not?

A. Yes, sir; it has a Constitution.

Q. Please state the rights and characteristics of its Constitution?

A. Those that characterize the rights and duties of the orders. It lays down the rights of its officers and it specifies their duties. If you want to know the Constitution of the Church, it is monarchical in its head, aristocratic in its government and democratic in election, because the humblest man that ever lived is eligible to the highest office, in fact one of the Popes was a swineherd.

Q. It combines the three?

A. It is monarchical in its head, that is the Pope; he is subject to no superior, he is subjected to the innate, hidden constitution of the Church as founded by Christ; he cannot do as he pleases, but he is bound by no ecclesiastical law excepting through propriety that the law makes itself, and it is proper that the legislator, or law-maker, should be the first to set a good example, and from the first Pope there has been a regular council of laws that the Church conforms to.

Q. Now, are there other tribunals, subordinate officers?

A. Oh, yes.

Q. The next in rank below the Pope in spiritual order, is whom? What is the name of the next in rank?

A. So far as the order is concerned now, I have to make a distinction, because I cannot make it in the way in which you put it.

Q. Generally, Father Nolan?

A. I say simply, there is a difference between an order and a dignity. For instance, the next after the Pope is a Bishop, for the Pope is only a Bishop, being Bishop of Rome. There is no higher order: he is the highest head of the Church. The next higher to him are Bishops, then priests, then ministers of various grades.

Now independent of these there are what we call dignities, *personatis*, in canonical law, officers of grades ; for instance, a Cardinal, that is the highest title in the Church, and a man may only be a deacon and yet he may be a Cardinal. He will outrank a Bishop though he has not the power.

Q. In the working organization of the Church ?

A. In the working organization the next highest are Bishops.

Q. Do you call an Archbishop a Bishop ?

A. Certainly, the Pope is a Bishop and he is no higher by God's ordinance ; all the others are merely ecclesiastical, whether you are an Archbishop, that is an ecclesiastical appointment, or whether you are a Patriarch or Cardinal Apostolic. All these things are just.

Q. How would you define the office of Archbishop ?

A. The office of Archbishop, just at the present time, is to hear and determine all appeals taken to him from the court of his suffragan Bishops, and about every five years, and probably oftener, by canon law every five years, to make an Archiepiscopal visitation to the suffragan Bishops. But now that is never done, practically speaking. It is different from what it was in the old times when his authority was greater. Practically the Archbishop has no authority at all over the Bishop, in principle he has, because he can take cognizance of any appeal taken from the Bishop to him.

Q. I am speaking now of the laws of the Church ?

A. That is the law of the Church, practically he has that, but he don't exercise it.

Q. Who is next to the Archbishop ?

A. If you go by that, by ecclesiastical law, the next after the Pope is the Patriarch of Constantinople, then of Antioch, and then of Jerusalem.

Q. In this country ?

A. Well, the body of Archbishops, so-called, but there is a special provision made for the primacy of presiding in favor of the Archbishop of Baltimore. If all the Bishops in this country met in General Council, the Archbishop of Baltimore, by the special privilege attached to his See, has the right to preside.

Q. I suppose that is by reason of its being the oldest See ?

A. The oldest See in this country.

Q. When was the first See or diocese established in this country ?

A. I don't mind. I know Archbishop Carroll was the first Bishop and then he was Archbishop.

Q. That is of Baltimore?

A. Yes, sir; I could not say now when the various archepiscopacies were established.

Q. Archbishop Carroll, of Baltimore, the first Bishop in the United States, was merely a priest during the Revolutionary war?

A. Yes, sir; a priest from England—a prebend. He was a Jesuit and was expelled or had to leave the Order when it was dissolved.

Q. The Diocese of Baltimore was created after the independence of this country was achieved?

A. Yes, sir; but he has no real authority over any other Bishop in the United States, except as I have said over his suffragan Bishops in his province, and then only when one takes an appeal from the Bishop in the lower court.

Q. Father Nolan, yesterday I understood you to say that there was no method of redress afforded in the Catholic Church at the present time, in your opinion, for the redress of the grievance termed a denial of justice on the part of the Bishop outside of the criminal features?

A. I think without hearing my answer read, I think I said, practically speaking, there is not.

Q. By the laws of the Church is there any provision?

A. Well, I may say by the laws of the Church, I said No. Dr. Smith says that there are appeals allowed in a case like that to the Archbishop, but he very distinctly stated that all such appeals can be called appeals only in a broad sense.

Q. Does he state that it is a mere matter of grace, as you stated yesterday? A. It cannot be simply a mere matter of grace.

Q. Did you say that he says that?

A. No; he does not say so, but he says that such appeals can be called appeals only in a broad loose sense.

Q. But as a fact, the Archbishop, or the Prefect of the Propaganda, being bound to hear that, as an absolute right, is it not a doctrine laid down by Dr. Smith that they are bound to hear those denials, as well as criminal cases appealed from the Bishop.

A. I think not, excepting in a general sense, in a loose general way.

Q. It is in the way canonists say it?

A. Canonists, I don't suppose ever presupposed the possibility of a case where a Bishop would refuse any trial to the accused.

Q. Now, Father, you are coming back to the question of trials, might not a question arise like this: a priest and a Bishop differ about the construction of a law applicable to a priest, involving no moral censure to the priest; how would that be determined? Supposing the Bishop would rule one way and the priest differ; how would that be settled? Isn't there a process in the Church to have that legally decided?

A. I have never seen an instance of it.

Q. I am asking now whether a law exists to review the action of a Bishop or Archbishop in such a case? A. In what case?

Q. In the case of there being a difference about the construction of a law, where the Bishop puts one construction on it and the priest another, call it anything you please, a review, or complaint, or anything else; does such a law exist in the Church, to review the action of the Bishop, or a tribunal to right the wrong?

A. If the priest is affected in his rights by any judicial decision of the Bishop, and if the priest's opinion about the matter is contrary to that of the Bishop, why the priest is bound for the time being to obey the Bishop as his superior until by a proper appeal to a higher court that decision of the lower court be either reversed or affirmed, but always supposing that a trial is given you. But what are you going to do where you are blocked on the threshold of the temple of justice, and no trial at all, and not even recognized?

Q. But suppose the question don't involve a trial, does not involve the censure of a man morally at all. Take this case for illustration. Suppose the Bishop of the diocese, when an applicant should apply to him for an appointment to a mission, should say: "Since you have been away, since I saw you before, the diocese has been divided, and, in my judgment of the canon law, you don't belong to the new diocese; you belong to where your last parish was," and the priest says "No, I have been residing within the limits of your diocese, and I have never been back there since the diocese was divided, I maintain, I belong to my original diocese and am a subject of yours." The Bishop says, "No, you are not. I cannot give you a mission." Now there is a square question, involving no

moral charges against the priest. Is there any way in the Catholic Church in which the ruling of the Bishop can be revoked or reviewed?

A. Yes, sir, there is that; I will answer that. I can show you several *ruled* decisions. The Bishop, in that instance—

Q. We are not asking you what diocese that priest belonged to. I am asking you whether there exists any remedy to right the wrong or to revoke the decision of the Bishop?

A. There is a simple remedy of *quaerimonium*, complaint.

Q. Is that an absolute right?

A. Every man has a right to complain to his superior of a grievance. You have a right to complain even to the man who inflicted the injury, and who, in moments of better sense, may see the wrong.

Q. Is that right provided for by the Church law?

A. If it be properly before the superior in a judicial way, certainly it is a right.

Q. I merely want to know whether canon law enables an aggrieved man, or who thinks he is, to call in question the action of the Bishop?

A. The man has *a priori* the right to complain, as I said before.

Q. Well, Father Nolan, is it possible in the Catholic Church for an honest difference of opinion between the Bishop and his priest on a question of an applicant to a mission, the Bishop refusing him, to give the applicant a mission or entertain his application on the ground that he belongs to another diocese, and that on that simple question of law determining to which diocese he is subject; that there is no tribunal in the Catholic Church superior to the Bishop to determine that question of law and to review the action of the Bishop?

A. As I said here, in a case of that kind there is an extra judicial appeal allowed, and that the Superior could take cognizance of it in that sense; but all those appeals are appeals only in a loose, general way.

Q. Is it not a remedy for a grievance or injustice?

A. Well, if the superior actually refuses to take cognizance of that appeal, I think, according to the law of the Catholic Church, they could compel him.

Q. What law? Where is that law?

A. I say there is no law—

Q. I understood you—

A. I say no law compelling the Archbishop to take cognizance of the case that is not properly before the tribunal.

Q. Suppose it is properly before the tribunal?

A. Can you go before a Superior Court without there being a trial and asking the judge to take cognizance of the case?

Q. If there was law allowing him to take notice of the judge's extra judicial acts I could. I am asking you whether there is not a law in the Catholic Church allowing the Bishop's extra judicial acts, known as the denial of justice, to be reviewed?

A. I am not aware of it.

Q. As a matter of fact, Father Nolan, is it not a very frequent occurrence that the Bishops and the priests honestly differ about the construction of statutes, and is there not some tribunal to review the decisions of the Archbishop?

A. Well, if a man be brought before the Bishop's tribunal regularly for a crime, for what would be a violation of the statute laws; that is—

Q. You are still evading the question. I am asking you about canon laws?

A. You may have one opinion about a thing and I another; but if the Bishop wishes to impose his opinion on me he must proceed by judicial process; then, in case of a decision in that court, I am regularly before a higher tribunal for decision.

Q. Suppose that the Bishop decides that you do not belong to this diocese, and orders your removal to the diocese of Cincinnati, and says you do not belong to his jurisdiction, would you not have an appeal from the decision of the Bishop to the Archbishop?

A. I would not mind the Bishop at all, and then it would be for the Bishop to show to the tribunal that I didn't.

Q. Suppose that he decided you didn't?

A. Then I wouldn't mind it.

Q. What would be the consequence, then?

A. None that I know of.

Q. Wouldn't you be in rebellion against your Bishop?

A. I would not, sir. Rebellion always presupposes proper authority. No man has a right—

Q. Wouldn't you lose your congregation?

A. There is no power in any Bishop in the United States to deprive a man of his congregation, unless for crime, proved in a regular trial, and any man that denies that denies the authority of the Holy See.

Q. Suppose he chooses to do so, is the course to be rebellion or appeal to his superiors, or is it to be regulated by his superiors or through rebellion; is the priest himself to judge whether he is to obey or not?

A. The priest is to be the judge in that case. Let me say here is a right guaranteed, it is the common law of the Catholic Church as has been a hundred times here, that before the Bishop can proceed to deprive a man of his office he must give the man a trial.

Q. Where is that law?

A. I said No. 77 of the Plenary Council of Baltimore, that is the common law. Now, the Pope's instructions modified that, but only about the mode of conducting the trial, and it even says if there is a question about the removal from his parish or his office of any missionary or rector, he cannot be deprived of his office unless the Bishop does so and so, and the Bishop who writes a letter and says you are dismissed from your office.

Q. Can you produce any such laws in the Catholic Church?

A. I produce the acts and decrees of the Plenary Council at Baltimore of '77, and the Instruction of the Pope in '78. Of course, if there be a higher law—

Q. Suppose you read that? probably your ideas of a criminal case are very incorrect.

By the Court.—Q. I wish you would define what you understand by a criminal case.

A. I will, sir. Whenever a punishment follows a trial for a cause, the cause is criminal, and wherever you ask something to be done or not to be done, it is disciplinary, for instance, if a priest in a parish adjoining mine claims that a portion of that district belongs to him, and I claim it belongs to me, and I appeal to the Bishop to decide that case, the Bishop decides either for me or against me. Now, there is no question of punishing me or the other man. You only make a petition before a proper tribunal for something to be done or not to be done, consequently that is disciplinary; for the violation of any law of the Catholic Church, for any violation of the statute laws, the violation implies a crime, and if you

are cited before the Bishop for this violation. and wherever punishment is imposed on you, that is a crime, that is the canon law.

By Mr. McKenna.—Q. Take the case you have used there, a dispute with reference to the lines between parishes, and suppose the Bishop rules against you there and you would feel aggrieved, could you go no further?

A. Why the Bishop in his judicial office having given the parties a hearing, then you would have the right to take an appeal.

Q. Suppose he actually refuses to give a hearing, and says, I have decided so and so, and if you do not like it what can you do then?

A. You can have an extra judicial appeal to the Archbishop at the time, and state the circumstances to him.

Q. By the laws of the Church is not the Archbishop bound to hear that?

A. In that case, yes, sir; I think so.

Q. Suppose the Archbishop refuses to decide in your favor when you appeal, would you have any remedy from his decision?

A. The same remedy you had in going to him, you could then appeal to Rome, to the Congregation of the Propaganda.

Q. Then I understand you now to say that is a right, it is not a matter of grace?

A. It is a right if the Bishop does in the first instance as the law requires, and takes cognizance of the case. If he refuses absolutely to entertain the case and do you any kind of justice, it is not such an obligation on the part of the superior, the Archbishop, as to imply that he commits sin if he does not do it.

Q. In reference to what you were speaking in regard to the extra judicial powers of the Bishop and the appeal from those acts, I would like to see some of your authorities on that?

A. Here is the only authority I could ever see.

Q. Does not the author treat there as to criminal cases?

A. Yes, sir.

By the Court.—I understand you to testify that there is no direct obligation on the part of the superior to hear the complaint because there is no such duty imposed in the law, and that you cannot refer to any authority which expressly says so because it is in the negative, and you say you do not know of any law which compels him to hear it? A. Yes, sir.

By Mr. McKenna.—Q. Do I understand you to say that when the Bishop or Archbishop does exercise jurisdiction on an extra judicial question, he does so without any authority?

A. Oh, no. Do you mean in the strict sense of the word, by authority, a strict right to proceed officially against the man?

Q. I mean a right to hear and determine?

A. Well, but really I consider the Archbishop in that case would not have official right to go against the Bishop.

Q. Would you show us any authority?

A. That also I cannot prove, it is in the negative.

By the Court.—Where there is an appeal, strictly speaking, is there any option whatever on the part of the Appellate Court to refuse to hear it? A. No, sir.

Q. He is bound to hear that? A. Yes, sir.

Q. And cannot avoid it? A. No, sir.

Q. Is that the law with reference to those complaints about the extra judicial actions on the part of the Bishop?

A. I have seen no law, sir, about that.

Q. Then your understanding of the law is that where the Bishop refuses to give the priest work without giving any reason for it, his only redress is by complaint to the Archbishop or to Rome, and they may hear or may not hear the petition as they think best?

A. That is my understanding, your Honor.

Q. Is it optional with them to hear it or not?

A. Yes, sir.

By Mr. McKenna.—What is your idea of an extra judicial decision, how would you define it?

A. Why, a decision pronounced by one having authority otherwise than after a trial had, pronounced anywhere other than a trial.

Q. On any question? A. On any question.

Q. What would you then style an extra judicial appeal?

A. An appeal simply where you have not got the Apostolic as testifying that there is a sentence pronounced in the lower court and that such an appeal was taken; and this should be taken within ten days after the sentence was passed, or knowledge that such sentence was passed came to the ears of the defendant.

Q. Would the denial of a mission, the denial of work to an applicant, to a properly qualified priest, be an extra judicial action or sentence on the part of the Bishop?

A. It would be.

Q. For such a case would an extra judicial appeal lie to the Archbishop?

A. Doctor Smith says this: "You have an extra judicial appeal, but that is an appeal only in the broad sense of the term."

Q. He would have a right, however, to appeal?

A. Every man would have a right to lay his complaint even before the man who injures him.

Q. Would the refusal of a Bishop to appoint a man to a mission, on the ground that he was a foreigner to his diocese, and the refusal to hear his petition or to act upon it, would such a refusal be an extra judicial act or decision? A. It certainly would.

Q. Such an extra judicial act, could it be appealed from?

A. I said in the loose, general way in which an extra judicial appeal is called, an appeal and no other.

Q. Now, Father Nolan, do you draw any distinction between the case the Court has just put to you, where you used the word complaint, humble complaint, as the proceeding that the Archbishop is not bound to entertain and hear.

A. There is no distinction.

Q. No distinction? A. Not to my mind?

Q. It is a mere matter of option to hear either case?

A. I have seen no authority as far as I know.

Q. Do you say that they are identical, this humble petition or complaint for the redress of a grievance to cite the Bishop to account and an extra judicial appeal?

A. The very same; they are all used under the word *querimonia*—complaints.

Q. you say there is no obligation that you are aware of that the Archbishop is obliged to hear such complaints?

A. No strict obligation.

Q. What do you mean by strict obligation?

A. Well that is tautological, because if there is any obligation it is a strict one.

Q. Now, Father Nolan, I ask you are the hearings of all these proceedings, all these extra judicial proceedings and complaints, done without any right on the part of the superior to do so.

A. Not without right; he has a right to use the influence of his office, even though there is no judicial appeal before him, to see that the inferior shall be induced to grant the complainant justice.

Q. I want to know whether it is a right, or usurped jurisdiction?

A. I don't think it is usurped, because what he can do officially cannot be usurpation, and if the man can officially appeal, then, if he appeal, according to his office—

Q. Has the Archbishop power to decide the question if the parties are not before him, on a judicial appeal?

A. If both parties are not before him?

Q. Yes, sir. A. Certainly he cannot.

Q. In such a case is the decision binding on the Bishop, if he does not appear?

A. Where he cannot even arbitrarily have the power?

Q. Suppose the Bishop does not respond to the citation to the appeal on the part of the aggrieved priest to the summons to the Archbishop, what is the priest's remedy then?

A. You put that question yesterday, and I will repeat what I have said. If the Bishop refuses in the first instance, he being the judge in all cases in the first instance,—

Q. He is not expected to be the judge in this case, we are summoning him—

A. Oh, yes; he is the judge. So far as the Bishop is the Pope, the executive of the diocese, is bound to see the laws carried out; certainly he can sit in a case where the observance and non-observance of the laws are in question; and I say if the Bishop refuses to entertain the case at all, and blocks justice on the threshold, I don't see any other remedy left than to humbly state the case to his superior.

Q. Do you know sufficient about the Archbishop's court to know whether there is a provision for judgment by default unless the Bishop appears—

A. The Bishop is not there at all unless—

Q. Suppose the priest takes an appeal from an extra judicial decision or ruling of the Bishop, and the Archbishop gives him proper notice; according to the rules of the Church a day is fixed to hear him, and the Bishop chooses to attend no further to the mat-

ter, and does not appear. Is there no adequate provision in the Church to hear that case and decide it?

A. I think not, sir; and I think the Archbishop cannot take cognizance of a case that is not officially before him, and any action he may take is through charity for the priest.

Q. Then I understand you to adhere to the opinion you expressed, that it is not a matter of justice, that it is a mere matter of grace for the Archbishop to hear that appeal from the ruling of the Bishop? A. Yes, sir; I said that.

Q. You say you have no authority in the Church for that opinion?

A. So far as I know. That is a negative question. There might be; it may be there are.

Q. You said this morning that book (Craissou) was recognized as a standard authority? A. He is good authority.

Q. Do you know how he divides appeals?

A. I suppose not in any different way from the other canonists.

Q. Can you give us his idea? A. Give me the book—

Q. I thought you had read it?

A. It is not necessary; I can apply the language. I can probably give my own definition of it as good as his. Craissou is a very fine author, but all law is not confined to books.

Q. Father Nolan, can you recur in any of your books to a ruling or provision made by the Vatican Council on the subject of appeals? A. Yes, sir.

Q. Have you got it there?

A. No, but I remember the authority.

Q. Don't it give appeals as a matter of right?

A. Yes, sir.

Q. It does in all cases?

A. You are mistaken in that general sense; some thought, especially the bishops of France, who are very great sticklers for episcopal authority, among whom some theologians very recklessly and falsely stated that the Bishop can do in his diocese what the Pope can do in the Catholic Church, which is a lie, and these men objected against any priest who took an appeal from their decisions directly to Rome, and this was laid down and embodied in some of their works on canon law that an appeal taken from a Bishop's decision directly to the Pope without having been laid before the

second tribunal of the Archbishop, that such proceeding was bad and ought to be reprehended, and in opposition to that doctrine the Pope asserted his right that every Catholic in the world, cleric or layman, had the right to appeal his case from any Bishop directly to the Pope.

Q. Father Nolan, can an appeal take place from a grievance extrajudicially inflicted, and what tribunal is there to be approached. The answer as found in *Leurenus* is, first, "as a general rule it is to be admitted that an appeal can be made from all grievances extrajudicially inflicted." This is evident from the chapter *Cum sit Romana*, 5 *de appel.*, where it is expressly decreed that "the appellant from a grievance before the commencement of a suit is to be heard, and that such appeals are to be heard, by the sacred canons." The same is evident (*Concertationi* 8, Tit. 15, Lib. 2, C., 6,) where it is thus decreed: "We decree that whoever, thinking himself aggrieved in the following instances, shall desire to have the inflicted grievances revoked by the privilege of appeal, may, within ten days (after it shall have come to his knowledge,) appeal, if he so wish, from elections, petitions, purveyings, and any extrajudicial acts whatever." I want to know your opinion of the law then if you say it is not the law?

A. Even now, take what the author says. He does not state it as a rule, only as a general rule.

Q. Is that the law or not—what I have read here—is that in force? A. I don't say it is in force.

Q. Is that in operation? A. No, sir.

Q. It is not?

A. You have no method. When the Bishop blocks the wheels of justice you have only *queremonia* or complaints, what we have in our law of the church.

Q. Can you point to any law of the Church where that is abrogated?

A. It appears so from that, if that be the law that you quoted.

Q. I am asking you if this is an accepted authority as to the Church? A. The Church don't accept anybody as a canonist.

Q. Is he an approved writer?

A. Certainly, approved in the sense that his works can be quoted as authority.

Q. And his treatise on law recognized as authority?

A. Yes, sir; containing nothing contrary to the law of the Church—an approved writer. For instance, the Council of Baltimore. We say that is an approved book. The Pope did not approve of it except in a general way that the Propaganda revised the book and said there is nothing contrary to faith or morals, and that is all.

Q. Father Nolan—that same book or that same author—do you know what directions or what provision he makes for carrying out appeals? A. This author?

Q. No; I am speaking of Leurenus?

A. No; I have not read the author. I must confess the most profound ignorance about the matter. I have not read him.

Q. Now, he says this on the subject: If an appeal must be made, who should be approached if the one inflicting the grievance should be called for trial? A. Should be approached?

Q. Yes, sir.

A. Might it not be for a remonstrance?

Q. It does not say it is not. This is the question I want to know, whether in your opinion that is sound canon law. I understood you to say a while ago that the first trial must be with the Bishop inflicting the censure. This expresses the contrary idea?

A. He has a right to have a recourse to the Archbishop. The author says so; but in one sense he does not say so, consequently he leaves the matter in the same doubt as before. Now here is what Dr. Smith says: The right of appeal, of removing a case from an inferior to a superior court, is expressly mentioned, and is according to some founded in the law of nature. Complaints is in another title, *queremonia* complaints, and alludes to appeals proper as above explained; that they presuppose regular trials, and hence have recourse to a superior against injuries inflicted without regular trials,—that is censures *ex informata conscientia* can be called appeals only in the broad sense—is not, strictly speaking, an appellate appeal, but only *queremonia*, a complaint or extra judicial appeal. There can be no doubt that an extra judicial appeal is of a lawful nature and of great practical importance, consequently especially in the United States where ecclesiastical trials even as described by the Sacred Congregation of the Propaganda of the Faith on the 20th of July, 1878, in the *Instructio*. And then he asks in case appeals

may be made, generally speaking it is lawful to appeal except where canon law—

Q. You accept that as correct, I suppose? A. Yes, sir.

Q. Now this morning in your testimony about the enactments and recommendations of Baltimore, you spoke about some provision that was introduced there by the Bishop of Fort Wayne suggesting to Rome a permanent provision for disabled and infirm priests, and said that the authorities of Rome returned the proposition as inopportune and unsuitable for adoption just now? A. You are correct.

Q. And I also understood you to say, in reply to a question, that the priest's right to support was coeval with his sub-deaconship. Also, I understood you to offer that resolution to confirm the assertion? A. I didn't offer it at all.

Q. I beg your pardon, but I understood you so. Now if that was an absolute right to which all priests are entitled, from the diocese, with or without work, why was it necessary for this council to devise ways and means for their support?

A. They didn't say it was necessary. I didn't consider them as expressing it as a matter of necessity at all. It was only giving effect. That was a matter devised by them to give effect or to carry into operation the rights the clergymen already had.

Q. Does the language of the recommendation say that?

A. They devise a way considering the rights that the clergyman, or missionary priest had acquired in his ordination. It states that.

Q. Is that it. I understood you differently. There is no conflict at all on that, so that the first right of a pastor was to be supported by his congregation and when he grew aged that congregation was liable for his support and maintenance? A. Yes, sir.

Q. Is that your idea, as gathered from this decree of Baltimore?

A. Yes, sir. First, if that congregation was able to support the aged pastor, a provision must be made to have them do so. The Bishops were earnestly advised, each one in his own diocese, to warn the people of the obligation resting on them for making provision for the pastor or priest in his old age, for superannuated priests, or any debility which rendered them unsuitable for the ministry.

Q. I understood that the congregation was first liable.

A. That is what the book says, the people are to be warned of the obligation of support and then every year a sum was to be asked

of the congregation and put into a common fund, from which fund the priest may have a support.

Q. Suppose that all the congregations were wealthy and able to support their aged pastors, what liability would there be on the diocese? A. None at all.

Q. Then you state that the liability would simply be in case the congregation was unable from poverty to afford the required support?

A. I didn't say that. But the parish and diocese is only one parish.

Q. The diocese only one?

A. That is all. Any subdivision into ecclesiastical districts is a matter of Episcopal arrangement, that is all. The Bishop can abolish that at any time he pleases. No congregation is known to the Holy See as such, because it is not a regular parish and consequently the Bishop is bound, if the congregation to which any priest is attached happens to be wealthy enough by their collections to relieve the Bishop of his obligation, the Bishop is relieved; and, I say then, if every congregation is able to pay the priest, the Bishop's obligation remains in fact, though, practically, he is relieved.

Q. Father Nolan, the only reason that was not carried out was that many of the churches were not able to support their pastors, much less support their superannuated or disabled pastors.

A. Well, I will say this in view of the case, I may say in order to show that the duty of supporting the priest rests primarily upon the congregation, is from your view of the case *ex absurdo*; it is within the competency of the Bishop to assign and prescribe the limits of any congregation; he may appoint seven or eight families on the railroad, and send a priest there, and say that is your parish. This, now, cannot be denied; this is confessedly within the Bishop's power. Now he sends a priest there; by the general law of the Catholic Church that priest is forbidden to devote himself to anything except religious duties, under the pain of suspension; now, in a place like that to which he has been assigned if he is compelled to look simply to his congregation that man will starve; he is put in the position, in the charge of a congregation, and on that congregation rests his support; that man is put into the predicament that

if he stays there he will starve, and if he turns his attention to get an honest living he is suspended.

Q. Suppose there were a dozen millionaires—

A. I am making a supposition, what is possible may happen.

Q. It don't take many to make up eight hundred dollars.

A. I have been in a place where sometimes I have been in a buggy for three consecutive weeks without going home, where the Bishop had to pay me the balance due; where he did it anyway.

Q. Now, Father Nolan, I was only speaking of the Plenary Council of Baltimore making it incumbent upon the congregation, in case it were able, to contribute first to the support of their superannuated pastor. Such recommendation was made in that Council. Supposing, Father Nolan, that in the very case we are trying, the doctrine of congregational liability should prevail in favor of Father Sheehan, what congregation would be liable for his support?

A. Well, it would depend upon where he last was. If he left that place formally, with permission of the lawful authority, that would be bound for his support. But if, in addition to that, he resigned it, as he can do, why then the next appointment that he received would be bound. But the last place is looked to, provided he didn't resign it. You know, for instance, I might get a leave of absence for a year or two years, take a trip during the summer, make arrangement with the Bishop or some one else, with my consent, to take my place, and when I returned, if I hadn't resigned—provided for it absolutely—I would look upon it as my own.

Q. Supposing you became incapacitated, through no fault of your own, during the two or three years of absence from the congregation—lose an arm and become incapacitated—who would be liable for your support?

A. If he resigned that place he had?

Q. No; suppose it was on leave of absence?

A. Well, then admitting the congregational liability, certainly, that would be liable. If he had not resigned—

Q. Don't you admit that the congregation is expected, and under the recommendation of the council of the Church is bound to contribute and support its superannuated pastors?

A. They are bound. Well there are no pastors but the Bishops. You should not use that word at all.

Q. Suppose we do use *quasi* pastor—the Bishop is a pastor—the technical word pastor is not correct as applied to rectors of missions, but it is in common use?

A. Well, if you go into the doctrine of titles I will give you a good deal of canon law in the matter.

Q. I ask you now, under the recommendation of the Plenary Council of Baltimore, who should support and maintain a man that was incapacitated during his leave of absence from a congregation able to support him?

A. By the laws, and common sense, yes; he who works for people has a right to look to them for support, that is true.

Q. What is the canon law on that point?

A. The canon law that you speak of, as it is in force, a man will be appointed to a benefice, and that is different because you have a certain office, an assured income, but taking our country, the right comes from the title and that comes from the diocese, the Bishop.

Q. But then, in illustration, if a man went away with the leave of his Bishop and became physically incapacitated, through no fault of his own you would certainly expect, then, the congregation to take care of him?

A. Well, considering the unlawfulness and coldness of charity as prevailing now, I think we might suppose that promise might be kept to the heart but broken to the hope. It might do very well for a few months, but I think the people would get tired supporting a man that couldn't work for them.

Q. I am speaking of the duty under the law.

A. The people are not bound excepting indirectly, excepting the obligation rests from justice.

Q. Of course I mean if the congregation is abundantly able to do it.

A. Well, if that were so, then the Bishop—he would compel them to do it. The Bishop has full power to do so; he can interdict their church.

Q. Refuse them a pastor until they do so?

A. Yes, sir; the law lays that down.

Q. Father Nolan, to come back again to the Plenary Council of Baltimore recommending to the Bishops that they make collections for sick and infirm priests, I understood you to state that where such

collection is ordered for the diocese, and made, the proceeds are placed in the hands of the Bishop for distribution? A. Yes, sir.

Q. And I understood you to say that it was entirely at his option how he afforded that relief?

A. Oh, no, it does not say at his option. I said it was at his option to allow other priests than superannuated priests, that is it gives two classes of people.

Q. Now, Father Nolan, suppose a man once in good health becomes incapacitated, and there is some question about the extent of his disability, and he applies to the Bishop, whose place is it to pass upon that question?

A. Well, if it be a question affecting his health, I think the M. D.'s instead of the D. D.'s. I think where the Bishop was compelled to give out money—

Q. Suppose the Bishop should call on him for proof of his disability, would he be bound to furnish it?

A. I certainly think he would. I would not give a dollar otherwise. That is common sense.

Q. Suppose, Father Nolan, that he was spiritually incapacitated, would he be obliged to furnish any testimonials or credentials to the Bishop after a long absence?

A. No, sir, no man; even canon law says no man is presumed to be bad, he must be proven so.

Q. But there is no proof, and we want an affirmative proof of his qualifications?

A. The Bishop, by the law of the Catholic Church, laid down in the Catholic Church, has full and perfect authority over the young clergyman who wishes to be ordained, and to know that he is addicted to no vice or immorality, and shall only select those who are fit, if he is not fully assured of the fact, and even afterwards, he can say to him I don't want you to be ordained a priest; I don't want you, sub-deacon, to be ordained a priest, and he cannot be, and your Honor will see that is right, because if it were not so, any man could, if he wished to, enter the Catholic Church and ministry, that great body of Christian men, and it should be at the option of the Bishop to say who is fit to enter. But now, when a man is a priest, the Bishop, by ordaining him, passes upon his fitness, and every warranty is given on the subject. Even in his exhortation, when he is ordained as a priest, the public is called to testify that if

there be anyone to say why he should not be ordained as a priest to let them come forward or forever afterward hold their peace. So when he is ordained there is every testimony to prove that he is fully qualified. And when a man is before the public, say for five or ten years, and no odium rests upon him, the man who calls his fitness into question should prove it.

Q. That is your opinion ?

A. Not my doctrine ; it is common sense.

Q. Where is that to be found ?

A. Found nowhere ; it is a negative, sir.

Q. Where in canon law can you show us any law that will require the Bishop to dispense with the testimonials and credentials of a man long absent from his diocese ?

A. Where ; I cannot find it ; there is no such place ; you are asking me to prove a negative.

Q. Is there any obligation to be satisfied as to the moral qualifications of the applicant when he comes back to apply for a mission ?

A. To inquire into the fitness of this man who comes back ?

Q. Yes, sir.

A. For the work of the ministry ?

Q. Yes, sir. A. Any obligation ?

Q. Yes, sir.

A. No obligation, unless there has been previous reports of his unfitness, that would be a good reason why the Bishop should take cognizance of those reports, no reason why he should act on them.

Q. Suppose, Father Nolan, the mere fact of long absence and not hearing from him at all, in that case is not the Bishop under obligation to require of him and exact from him some testimony or credentials as to where he has been ?

A. No, sir. There is no such obligation at all. If public rumor be such as to bring stories to the Bishop and scandals about that man's crimes or faults, of any kind, to render him unworthy, it becomes the Bishop, as the Governor of the diocese, to inquire into the truth of such rumors. But if there is no such rumor, from whom shall he have testimony of his character ? To what Tom, Dick and Harry shall he go to get the testimonial of his character ?

Q. As a traveling priest of the United States can you go into any other diocese and exercise the priesthood ?

A. No, sir ; you can not.

Q. You state that, then ?

A. No, sir. There is no priest going from one diocese to another can discharge the duties of the ministry as a priest, with all the full faculties, spiritual faculties, without the approbation of the Bishop of the diocese, and it is very likely that the Bishop will not give you that privilege unless he has commendatory letters of the former Bishop, for every priest going away for four or five weeks gets these commendatory letters, which state that he is in good standing.

Q. Suppose a priest, out of the diocese for years, returns without such letters, finds the diocese divided, with a new Bishop in the portion which he claims he belongs to. He applies for a mission, and produces no letters or testimonials to the newly consecrated Bishop. Has such priest a right to be received ?

A. I will repeat the question. If the priest be bound to produce letters testifying to his good behavior, such testimonial letters must come from somebody. Would you have the kindness to suggest to me what person the traveler should apply to for such letters ? It is a negative thing altogether.

Q. You stated in your examination in January last that you would very likely, if you were a Bishop, exact such letters and credentials.

A. I think, Mr. McKenna, knowing that I am not easily puzzled, I don't think that I did express myself in that way. I might have said this, if reports came to my ears of scandalous nature about that priest, I certainly then would say to you, and I repeat it now, I certainly would make a very strict investigation of that priest's conduct, and if I found the reports were true, I would examine him before my tribunal, and I would suspend him or visit some other censure.

Q. Suppose he would not come before your tribunal ?

A. Wouldn't come ?

Q. Yes ; when he is summoned ; or suppose he evaded the summons ?

A. He is contumacious.

Q. Would you go on then ?

A. I certainly would.

Q. Now, I suppose, having read the papers in this case you understand what this controversy here is about.

A. Yes, sir ; I think I do.

Q. For the action of Bishop Tuigg in refusing to appoint Father Sheehan to a mission, either on the ground that he did not present proper testimonials or credentials, or because on account of the division of the diocese. You can state your opinion of the canon law, whether, in your judgment, Father Sheehan had any remedy or redress in the courts of his own Church.

A. To return to the same point over again ?

Q. No ; I want it applied to this case.

A. Applied to this case. Father Sheehan came to Bishop Tuigg and said, " Here I am ; I want to be appointed to a place," and Bishop Tuigg says, " I don't recognize you as a priest of the diocese," and refuses him a place ; Bishop Tuigg knowing very well that Father Sheehan had been a priest of the diocese—

Q. Please answer the question ; we wish to know if Father Sheehan had any remedy in the Church for the grievance he complains of.

A. I say has no judicial remedy, he has an extra judicial remedy.

Q. *By the Court.*—That is not to restore or to give him work ; the question here is, is he entitled—if a Bishop refuses to give a priest of his diocese work who has not been tried or convicted of any offense, does that act of the Bishop suspend or deprive the priest for the time being of his right to support from the diocese ?

A. It does not do it, and if he withholds it, he does so wrongfully, for, as I said, extra judicial sentences, such as *ex informata conscientia*, or for censure, or otherwise, can never take away the office of a missionary priest ; and where the office exists, the rights and emoluments arising from that office belong to the person who is wrongfully deprived of them ; and all I have to say with regard to the matter is that the person so deprived was wrongfully deprived.

Q. *By Mr. McKenna.*—Has the Bishop a right to refuse a priest in his diocese work and not allow him any support without first convicting him of some offense ?

A. He has not, sir. That is the law of Baltimore and the Instructions of July, 1878 ; and, if anything was clearly specified, it

was that it says that is the common law ; I will tell what it is, it is like a bill of rights, no legislation even against it, and is no legislation at all.

Q. Now, I suppose, you think Bishop Tuigg had no right to do what he did ? A. I think not, sir.

Q. Now suppose that would be a mistake, an injustice to Father Sheehan ; what would be the remedy in the Church for it ?

A. I will tell you what I would do. If Father Sheehan came to me and said, "I want the place of a priest in the diocese," and, if I thought that I, the Bishop, if I hadn't proof that he was unworthy, I would employ him ; if I had any suspicion that he hadn't the qualifications, that he had a certain weakness, it would not be long before I would find proof of it ; I would cite him before the tribunal, cite him there and censure him, and then I would let him whistle.

Q. You haven't answered that Is there any redress in the Church ?

A. Here is the law as laid down, as the Diocesan, the Bishop in the first instance is the judge of all causes matrimonial, beneficial, criminal and disciplinary of his clergy and of all persons in his diocese, in the first instance if he does not hold the court at all and renders no decision, and refuses and stops the party on the threshold of justice, there is no regular judicial remedy left you, excepting as I have said what you may call *querimonia*, or complaint, as you, or anyone else, have a perfect right to do, and which may or may not be heard. You might call it an extra judicial remedy, too.

Q. Isn't it the sworn duty of the Archbishop to correct the neglect or non-action of the Bishop ?

A. I make this very common distinction : If the wrong doing Bishop be legally before the tribunal upon appeal, yes ; or they appeal to his court when the Archbishop is making his archiepiscopal visit of his province, he can proceed officially against the Bishop and compel the Bishop to answer any complaint like that.

Q. So he has a collective right, where the Bishop, through neglect, or malice, or mistake, refuses to act in a given case ?

A. What I said a right of *querimonia*, when he makes the visitation, but as I say an extra judicial right, again, because he may or may not entertain it, do as he pleases.

Q. You say he has that right in two ways, on his archiepiscopal visitation he can proceed to do so, and on an extra judicial appeal or hearing.

A. Not on an extra judicial hearing, because there is no appeal rightly before him, and unless there is an appeal there can be no hearing.

Q. We have been using the phrase as synonymous with a trial in a case in which no sentence was had. This is the meaning of an extra judicial appeal.

A. As I said, no remedies lawfully, except by *querimonia*, complaints, or petition—

Q. Those are remedies?

A. Yes, sir; you have a right to apply from Philip drunk to Philip sober.

Q. You say they are remedies?

A. No, sir; as to what are they sufficient? Without they are sufficient there is no remedy.

Q. Don't the matter assume a judicial aspect on the extra judicial appeal?

A. It may come before his ears, it may come by the apostoli, by the letters of the lower court, of such and such a case testifying that—

Q. I understood you a moment ago to answer my question that it was not his express duty to take cognizance of, and interfere in, a case of the neglect of a Bishop, or where the Bishop acted through malice or through mistake?

A. If that be officially before him it is.

Q. How is that brought there officially.

A. The proper way is laid down, by a case tried in the lower court.

Q. Do you mean to say that if there has not been a trial it cannot be brought officially before the superior court?

A. Not judicially.

Q. Cannot be brought there at all?

A. You are not in court. Still there is no man can be prevented from writing a letter to his superior and telling him about his complaint.

Q. Suppose you appeal by regular appeal and citation to the Bishop? Have you ever had a case, Father Nolan, yourself, that you were counsel in? Go through all this formula?

A. Yes, sir; I have, decidedly.

Q. You know all about it? A. I know all about it.

Q. Of course I mean as counsel? A. Oh, any way you please.

Q. The term citation was used here. On the presentation of such a bill a citation would be issued from the Archbishop to the Bishop, commanding him to come forward and show cause why the act or course complained of should not be remedied?

A. There are two ways of looking at that.

Q. Is there such a proceeding as that?

A. For instance, there are some things which the Bishop of the lower court may do that are wholly within his administrative competency. There are other things he may do which affect the right of subjects. Now, suppose a case: The Bishop is your enemy, or has a personal dislike to you, and you are afraid he is going to suspend you. You have a right to prevent that, or any threatened injury of the Bishop, to appeal to your superior, and he is bound to take cognizance of it.

Q. Before any trial?

A. Yes, sir. You have a right to do that, because the danger is imminent, it is almost at your doors, and you may be warned of it, and stop it by prohibiting your superior from proceeding in this way until he shall have first cited you in the Metropolitan Court, showing that you were guilty of so and so and deserving of sentence. But there are some things in his power within his administration, and if you appeal to the Archbishop and he took cognizance of it, he might say that is within the administration of my diocese, and it is none of your business.

Q. Now, supposing the Bishop is mistaken, could not that question be raised by a higher authority than his?

A. I say there is that extra judicial appeal to Rome. You call it *queremonia* or complaint, and you can in all probability—not probability alone, I might say with certainty—that he whose business it is in the first instance to hear and take cognizance of this case will be compelled to by their intervention. But sometimes, and as a general rule, that process is so tedious and connected with the loss of time, suspense and a great many sacrifices, that very few

are able to have that justice even. You have a right to *queremo-*
nia or an extra judicial complaint.

Q. Supposing that on appeal the Bishop is found to be wrong and is reversed, injustice has been done, salary is denied, injury done to one's private character, what is the final decree of the Court of Rome? What is the obligation on the part of the Bishop as to the result of that decision? A. To undo and rectify the wrong.

Q. We want to know if after the case is adjudicated in Rome, properly adjudicated, adversely to the Bishop, involving a question of a denial of office and salary, slander or any other injury that the aggrieved party may have, what is the nature of the reparation afforded by the ultimate decree at Rome against the Bishop?

A. Such as would be fully required to meet the exigencies of the case. If the man's salary would be denied, the Bishop would be compelled to pay it. If he didn't do it voluntarily he would be compelled likely by the Court of Rome. If it was a case of slander he would be compelled to retract it, because that is the law of God as well as the decree of Rome.

Q. And if the question of the office is decided against the Bishop he is compelled to restore him?

A. The office? Yes, sir; though I do not know as I fully understand you.

Q. I put this case: A priest was deprived of an office and salary, and, on the final investigation, the Supreme Court of the Church found adversely to the Bishop. As I understand, the court would require recompense for the salary unlawfully denied and reparation for the loss of time. I now ask you if taking an appeal to decide the question whether or not an appointment was unjustly withheld, would the court, on the decision being rendered adverse to the Bishop, require that the priest be appointed to the mission?

A. Certainly it would. If he had a right to it, in order to rectify the wrong, and though they there give him an office, the assumption is that he never lost it.

Q. Then, in a word, a priest that is wronged by his Bishop, in money or office, or anything, has a remedy in the tribunals of the Catholic Church, complete and adequate, by the canon law—any priest aggrieved in money, character, or any other way by his Bishop, has, in the Catholic Church, full and perfect redress?

A. Yes, sir.

Q. Under the canon law? A. The laws of the Church.

Q. Under the constitution and laws of the Catholic Church in this country?

A. I deny that. Either that the law of the Catholic Church should have authority and title of the Catholic Church—

Q. Answer the question.

A. I can't answer it the way you put it. You say according to the canon law.

Q. According to the canon law enforced in the United States.

A. He has not.

Q. You think he has not?

A. No, sir. If he has I have the most extraordinary example of it before my eyes. The Very Rev. John Hickey, and I say here is an example—

Q. Now that is your opinion, that as the law of the Church stands in the United States there is no full or adequate remedy for grievances in either property or character. Am I right in that?

A. That is my opinion, sir. Under the present constitution of the Church of the United States, where the Bishop can block the machinery of justice on the very threshold and prevent you going into a higher court, or put you into such a position that you can't appeal; then, they explain, it can afford complete and full justice.

Q. Has that always been your conviction, or have you formed it lately?

A. I have great faith in the extra judicial *querinomia* to the Holy See, and very seldom, if ever, a man, who can afford to wait, and has plenty of money to spend, is it that such a man would be denied full justice in Rome. I don't know of many instances.

Q. I ask you the question, if this has always been your opinion, or has it been recently formed?

A. It was always my opinion that extra judicial appeals to Rome are not only proper but very beneficial for everybody.

Q. Do I understand you then that in your opinion the laws in the Church, in this country, are inoperative and insufficient to afford relief to priests in certain cases?

A. Yes, sir; that is my experience. Until the Council of Baltimore, we were not allowed even a trial. You were like the serfs of Russia; you had no remedy but the extra judicial appeal,

and since that, and the promulgation of the decrees of 1877, it is the common law, like our Constitution, that no priest can be deprived of his parish, that is, of his office, unless he is convicted by a regular trial.

Q. You might cite that law?

A. I translated the other day. It is not necessary for me to translate it, but I will. "Priests who have been interdicted the exercise of the priesthood by the sentence of their Ordinary, have no right to ask him for a support, because from their own fault they have rendered themselves incompetent," or incapacitated is a better word, "for the duty of mission, but that every cause or ground of complaint may be removed, the Fathers think it altogether expedient that the Ordinaries of the diocese, in the criminal causes of their clergymen, or a priest, should observe a certain form of trial, which may come as near as possible to that prescribed by the Council of Trent, viz: That the Bishop or his Vicar-General, or by his commission, acting under his commission, shall elect, or should elect, two consultors of the same Bishop, and not always the same consultors who might assist"—That is the Vicar-General, about to judge the priest of crime—"however, before a notary of the Bishop, but if the votes of both be the same"—this is the preliminary part of it—"finally let the Judges of Causes be selected from the number of the same consultors, if that appear good to the Bishop"—the meaning of that is not whether it appears good to the Bishop or not, but whether it appears right to the Bishop to take these people from the members of his own Diocesan Council—"Let them be selected who may judge the priests, who in the first instance may judge the priest accused of crime according to the Bishop's delegation of priests accused of crime, and that according to the rule recognized by the Holy See, which was prescribed in the Provincial Council of St. Louis, in the year 1855, which Provincial Council was recognized by the Holy See. The Fathers of this Plenary Council of Baltimore decreed to have the force of common law, and which, they say, is the common law or decree."

Q. Now does that say a word, as I understood you to say, to the effect that no priest was to be deprived of his parish without a trial; that does not allude except to criminal cases?

A. You cannot deprive a man of his parish unless for criminal cause, and this says that in a criminal case you must proceed this way, and this is common law, but what is not very explicitly laid down in this book is laid down in this Instruction.

Q. Do you say that a man cannot be deprived of his office except for what is known as a criminal cause? A. I do, sir.

Q. What is your opinion of a criminal cause?

A. I have stated that.

Q. I don't want you to enunciate now that no priest can be deprived of a parish except in a criminal cause—

A. That is all a criminal cause of which he has been convicted, a crime of which he has been convicted according to the regular trial before five members of the commission of investigation.

Q. What about these threatened suspensions from which a priest takes an appeal? A. A threatened suspension?

Q. Yes, sir; wouldn't that deprive him of his parish?

A. No; that is based upon a total ignorance of the laws of the Church.

Q. I may concede that, but you have stated here that an appeal will lie from a threatened suspension. Now, I ask you, can a man, neglecting to appeal from a threatened suspension, lose his parish without a trial? A. No, sir; he cannot.

Q. He cannot? A. No, sir.

By the Court.—I understand the witness that an appeal before or in view of some threatened *gravamen* is in the nature of an injunction? A. Yes, sir.

Q. And suspension *ex informata conscientia*, where the Bishop suspends that way, he cannot touch your office or your order at all?

A. That is a mistake; the law don't recognize in any human being that right unless he has given you a trial.

Q. He may be suspended in the exercise of his function?

A. Yes, sir.

By Mr. McKenna.—I ask for further enlightenment; you are drawing a distinction between the office and the mission and the parish. Now will you define this distinction, the ordination is an office? A. Yes, sir.

Q. What is the mission? Is that an office?

A. The mission is the diocese.

Q. What is appointing a man to a congregation?

A. That is according an appointment to a certain limit or circumscribed portion of that diocese.

Q. Isn't that called a mission?

A. The mission is the diocese.

Q. What is the title of mission?

A. The diocese. So much is that true that you give up the office of mission in the diocese and go away and you are, *ipso facto*, incapacitated from any work until you have a new title in the other.

Q. Now, just on that, suppose a priest belongs in the Allegheny diocese, his last congregation was there: could he get affiliated with the diocese of Pittsburgh unless he brought letters or *exeat* from his former Bishop and the new Bishop received them?

A. Admitting the division of the diocese into two distinct dioceses, each of which has its own Bishop? Q. Yes, sir.

A. Then they have distributed rights, and no priest of one diocese can go into the other without the consent of his own diocesan Bishop and the permission of the other.

Q. Supposing that, at the division of this diocese of Pittsburgh into that of Pittsburgh and Allegheny, you lived within the boundaries of the Allegheny division, and wanted to be assigned to service in the Pittsburgh division, what steps would it be necessary for you to take to get affiliated to Pittsburgh?

A. After each diocese had its Bishop?

Q. Yes, sir; and you were in the Allegheny diocese and wanted to get into Pittsburgh?

A. I would first of all ask to know if the other Bishop would receive me, and then if he would receive me I would get the consent of my own diocesan and go away.

Q. That is in strict conformity with the laws of the Church?

A. Yes, sir.

Q. The object of that is to prevent priests wandering around without a diocesan? A. Yes, sir.

Q. They do not allow them to depart until they get another place?

A. Yes, sir; every man must stay in his own diocese until he is appointed lawfully to a place in another diocese.

Q. The letters of *exeat* are never issued until the arrangements are made to accept the new candidate. And now, supposing you wanted to get into the Pittsburgh diocese, you said you would first

apply to the Bishop of Pittsburgh to ascertain whether he would receive you? A. Yes, sir.

Q. And then to Bishop Domenec and ask him for an *exeat*?

A. Yes, sir.

Q. And supposing that Bishop Domenec refuses to give you the *exeat*, could you go away from his diocese?

A. No, sir, I could not.

Q. Can a man lose the office of missionary priest?

A. Yes, sir.

Q. How?

A. First of all he can be deprived of it, he can resign it.

Q. How can he be deprived of it?

A. First of all, for a crime ascertained publicly, on a sentence, for the Bishop inflicting the punishment should say to the priest, I hereby deprive you of your parish, inflict that punishment upon you, and no longer consider you a missionary priest of the diocese. That would be all right, for the priest has a right to appeal that. The second way is, the priest can resign the office into the hands of the authorities that imposed the obligation on him, and that is into the hands of the Propaganda, and if they accept your resignation you must assure them that you have means of living in some other way, for the title means his livelihood.

Q. Do I understand you to assert that on the ordination into a given diocese, the priest could spend his life unemployed, in no active exercise of the priesthood, if the Bishop would not choose to assign him any duty, and the diocese would be liable for his support?

A. I said that, sir. That follows as the correct principle I have laid down. It is for the Bishop to say whether he ought and will be appointed or not. No man has a right to be appointed *quasi* clergy.

Q. Is it not a direct obligation to keep yourself always qualified?

A. Yes, sir; and it would be a very unworthy man who was not, not only before the public, ready and worthy to discharge his duty, but also before God and the tribunal of his own conscience.

By Mr. Watterson.—Q. Suppose a priest as having a congregation in a diocese, and that he would go to his Bishop and resign his congregation and the Bishop would accept his resignation, the diocese would afterwards be divided, would that priest necessarily

belong to the diocese in which he had his last congregation in which he officiated?

A. No. Not necessarily.

Q. Which one would he belong to?

A. Follow the title of the former diocese. He belonged to that diocese.

By the Court.—Take this case directly. During the time before the diocese was divided Father Sheehan had a congregation in that portion of the diocese which was set off as the Allegheny diocese, but this was done after he had resigned his congregation and was residing in the territory of the Pittsburgh diocese, to which diocese does he properly belong?

A. He belongs to the diocese of Pittsburgh, and I gave the rule of the case to-day, from the Interpreter of the Council of Trent, to show that priests not regularly in a religious order, in a religious congregation where their superior had a right to remove them from a house in one diocese to a house in another diocese, and in case where these priests should return to the secular priesthood, it was held they always had to go back to the diocese of their origin, as the proper place to which they belonged.

By Mr. Watterson.—Q. Can a priest resign his title of a mission? Does a mission refer to a diocese?

A. I said that a hundred times.

Q. I understood you to say that a priest can resign his congregation that had not resigned his mission? A. Yes, sir.

Q. Resigning his mission is severing his connection with the diocese. I mean that the word mission is synonymous with diocese?

A. Yes, sir.

By Mr. McKenna.—Q. Is not that phrase used frequently as applicable to the various congregations, appointed to a mission?

A. I ordinarily use it for the subdivision of the diocese of which a priest has charge. For instance, I call my place in Butler St. Paul's Mission, and that is the common parlance, but properly speaking the mission is the diocese.

FATHER SHEEHAN, the plaintiff, recalled in his own behalf and testified as follows :

Examined by Mr. Watterson.

Q. Have you been a listener to the law of the Catholic Church and the sentences incurred for the violation thereof, and the kinds of appeals, and the distinction which was made between appeals from trials and sentences by the courts of the Church and those complaints, or, what was popularly termed appeals, for the protection of priests, as made by Father Nolan here? A. Yes, sir.

Q. I wish you would state whether that distinction was well founded by the laws of the Church?

A. Yes, sir, the distinction is correct; I shall explain if the Court desires. By the canons of the 14th session, in the Council of Trent, a Bishop gets extraordinary powers which are defined as to the penalty which he can inflict. They are of two characters. The first is that of a summary process, without assigning a reason or cause to any person, or forbidding a cleric to receive or ascend to a higher order than the one in which he is in at present. He need assign a reason to no person for this extra judicial action of his. The next is that he can suspend from the order already received, or from the grade, or from the dignity. That is especially mentioned in the Council of Trent, and the power is called technically "*ex informata conscientia*." In this case there is no appeal whatever; the distinction made is that this extra judicial power conferred by this chapter of the Council of Trent under the 14th session is it never can in any country, either this or any other, under any circumstances whatever, touch any office; it touches simply what it says: grade, dignity and order. No penalty especially defined by the Council of Trent outside of that. There is no appeal from the Bishop. There is not even a *querimonium* to the Archbishop from this power at all. The Archbishop is dead so far as his complaint is even heard. There are other extra judicial acts which he can perform in virtue of this power, *ex informata conscientia*, or administrative power, and against these extra judicial acts there are what we call complaints, that is, in other words, you have a legal right in the Church as in the State, the right of petition. It can be heard, though there is no obligation for it. There is no appeal, because there cannot be an appeal, except from a judicial sentence in the

Church. The case must necessarily, in the first instance, be in the ordinary court of the Bishop, and there must be a sentence. And if there be a priest making a *querimonium* or complaint against these extra judicial acts, and he should be heard even, the only remedy known to this country would be to send such a priest back to the original and ordinary jurisdiction of the Bishop's court, so that it could be tried there, and the person receive sentence, condemnation or acquittal. If condemnation, then the right of appeal comes in, because there is a formal sentence, and without that, common sense as well as canon law says there cannot be an appeal.

Q. In the eye of the Church does the Bishop ever die, the bishopric, the functions of the office, as Bishop of the diocese, does the Bishop ever die?

A. No, sir; the office of the Bishop is permanent.

Q. And the successor assumes the duties and obligations of his predecessor, the individual man who happens to be Bishop?

A. Certainly. Officially he is the same person.

Q. Now, coming to the question of locality, suppose a priest is upon a particular mission, for instance, in Indiana county, and he had resigned that mission, and after his resignation of that mission the diocese was divided, and Indiana county goes into the Allegheny diocese; where would that priest owe allegiance and duty?

A. To the Pittsburgh diocese. When he resigns the particular portion, or station, or district, or post assigned to him in what was formerly in its name the Allegheny diocese, and when this resignation was accepted by the proper authority, that moment he ceases to have any connection whatever with that particular post. Other persons were appointed, he immediately, of course, fell into the office of a priest of the diocese. It made no difference whether he made his home in one portion or the other, he was a Pittsburgh priest.

Q. His duty and fealty was to the diocese of Pittsburgh?

A. Of course he owed Allegheny none. But in this case, of course, I returned into the Pittsburgh diocese before the Allegheny diocese was divided at all, and there can be no question about the matter.

By the Court.—At the time of the division where were you residing? A. In the city of Pittsburgh.

Q. Within what is now the Pittsburgh diocese?

A. Yes, sir; I think in this ward, within gunshot of here.

By Mr. Marshall—Did you hear Father Nolan's exposition of the law touching the common law of the Church, as announced in the Council of Baltimore, in this country?

A. Yes, sir; the canon law, as evidenced by Father Nolan, is not only correct, but it is so plain that I cannot see how any person can misinterpret it. It is absolutely certain that before a priest can be interdicted of the right to exercise his ministry by the common ecclesiastical law of this country there is given an ecclesiastical process of trial and conviction to be had, and previously and before such exercise of the ministry can be interdicted.

Q. Is there any law or rule or regulation known to the Catholic Church as such, by which the priest absent from the immediate territorial boundaries of the diocese for a year and a half or two years shall give testimonials of character to his own Bishop when he comes back?

A. Never heard so, sir. Supposing Bishop Tuigg left here to go to Ireland or Europe, it would be preposterous to exact any testimonials when he returned.

Q. Is there any such thing known to the Church?

A. Not to law or custom. If you belong to that diocese, sir, you would then be taking out your naturalization papers and going through the formulas. There is no higher character known in the Catholic Church than to be an approved priest. In the catechisms of our Church to whom must you make your confessions? It is answered, to an approved priest; and when a priest is once approved after five annual examinations he is then, not only by presumption of common sense and reason, but by law, to be approved until the contrary is proved by a trial and conviction according to the common law of Baltimore.

Q. Were you an approved priest, sir at the time of the creation of the Bishopric of Pittsburgh? A. Certainly, and am yet.

Q. Allegheny, I meant to say?

A. Yes, sir; and I have all the jurisdiction and all the faculties that any priest in court here has, or Bishop Tuigg has, that is, outside of all the ordinary faculties of a Bishop. I can hear confessions independent of Bishop Tuigg, and I can say mass. I have all those faculties given me and they cannot be taken away without trial. They were never taken away by anybody.

Q. Then, sir, am I to understand, sir, whether a priest has a congregation or not it does not affect his character?

A. Not at all. There are thousands of priests in Europe who have no congregations at all. They have some 50 parish priests in the city of Rome who have congregations, and I guess you could get a thousand priests who have no parishes at all.

Q. If I understand you right, your position is this: That a priest of the diocese never can lose his place in that diocese unless he is dismissed with the sanction of the Bishop and received by the Bishop in another diocese? **A.** That is the only known way.

Q. And he must live or starve in that diocese?

A. That is about the way, for the reason mentioned there is a provision made in the title of mission that you cannot resign it into the hands of the Bishop; the Bishop is incompetent by the very title of mission itself to receive the resignation of it; it must be with the consent of the Sacred Propaganda who absolves you from that oath, and it never does so until you get a previous substitution of another title of decent support, and I will give an instance if the court wishes. The Rev. Father Nolan, who happens to be possessed of some means of support independent of what he can get from the mission, was ordained under the title of mission as we all are here, and he thought it proper to get this title changed. That is, he thought proper to resign it and Bishop Tuigg had no power to accept that resignation, nor any other Bishop in the United States, because Father Nolan could not validly resign that title to the Bishop, nor could the Bishop accept it, and if the Bishop would have accepted such resignation it would be null and void, and as by the penalty or rule on the law of benefices the Bishop in that case would be bound to support Father Nolan, but he goes to a higher authority that imposed that title, and with the permission of the Holy See, the Propaganda, he gets that title by first resigning this title of mission, and immediately at the same time a substitute by giving to Rome the proper guarantee that he has sufficient means pledged for his own support and will never be pledged, or mortgaged, or lost in any gambling process in bonds or stocks, that will support him for his natural life, and he has got his title changed, and the Bishop is not bound to support Father Nolan now only so far as Father Nolan labors for the diocese. The manner of the resignation of the title is provided for in the explanation of the title itself.

Q. Did Bishop Tuigg ever ask you for letters of recommendation of character when you returned ?

A. No, sir. My testimony is, "I have received no person into the diocese yet, Father Sheehan, he says." And when I heard that word I was astonished, for the word receive a person into the diocese supposed the man to be a foreigner.

Q. No demands were ever made upon you ?

A. No, sir. I would receive it as an insult if it were.

Q. Are you what is known as a priest of a mission ?

A. Yes, sir.

Q. You have no patrimony ? A. No, sir.

Q. Have you been ready in the last four years to fulfill your duties as a priest of the diocese of Pittsburgh ?

A. Certainly, sir. The offer is permanent of course ; my duty is of a permanent character ; I have no manner of right to labor in the diocese ; it is my duty before God and the Church ; I have no other place on the face of the earth to labor but in the diocese of Pittsburgh. I am forbidden by the canon laws of the Church to labor at anything else but my ministry. I can break the canon laws. Sometimes a man can break civil laws if he wants to.

Q. And suffer the penalties ? A. If he wants to.

Q. Do you know of any law in the Catholic Church as exercised by the ministry of the United States of a priest able and willing to fulfill the duties of his office being supported by charity ?

A. Able and willing.

Q. Yes, sir.

A. Do you mean that he is an approved priest of the Catholic Church ?

Q. Yes, sir. Do you know of any such law, when he is ready and willing to fulfill the duties of a priest, able and willing ?

A. With an explanation I will say no. There is a provision made for sick priests and infirm priests.

Q. I am speaking of a priest physically able, humanly and morally ready to perform the duties imposed by his Bishop ?

A. I am not aware of any law. The diocese is bound in justice to support.

Q. Was it ever put in the law of the Church as a charity to give a man a living ?

A. Oh, not at all. You have no claim or demand for charity. There is, for instance, in the Pittsburgh diocese here a clerical relief association; I am in a position myself to give a portion of its history. It is a mutual fund, and the fund referred to in Baltimore is for funds derived or obtained from the various congregations of the diocese, which imposes a duty in the eye of the Bishop, a duty on the priest, and that then the accidental portion would be the subscription by which the priest in the diocese as a condition of that fund, if he would not put in the money he can draw nothing out. That is the provision made, and then the answer of the Propaganda, as referred to by Father Nolan, is very explicit on the matter; that there was an offer made on the part of the Bishop to make this provision of charity as something of a half substitute for the right of support inherent in the priest by his title of mission, and they said that they would not allow such a substitution for the right conferred or rather for the right already acquired, and threw out this recommendation of the Bishop of Ft. Wayne from the text, and stated that it was the duty of the Bishop to support his priests. It was well known by the priests of the United States that there had been some effort made to change this title of mission in order that the Bishop might be free, and some efforts also made to modify the oath of the priest so that he would not be compelled to take the oath of perpetual service, in order that there should not be a perpetual contract; but the Holy See says no, this oath must be taken, and, further, the oath of allegiance before you can get this title from the Holy See. There is a permanence there, and the rights are inherent in the office of missionary, and this is contained in the missionary title itself. The office of missionary cannot be taken away from the priest except through the consent of the Propaganda, and further specified particularly that it cannot be taken away by the Ordinaries.

Q. Then you agree to the exposition of the law of the Church as laid down by Father Nolan?

A. I do, sir; only with the distinction I made, I don't think that his attention was called sufficiently to the distinction between the two classes of extrajudicial cases.

Q. Give us your distinction?

A. He seemed in cross-examination to not clearly distinguish between extrajudicial cases. There are provisions made for only

one class of extrajudicial acts. There is another class of extrajudicial acts which come, properly speaking, from the Council of Trent, *ex informata conscientia*, and there is nothing at all of a remedy for that. You can go as Lazarus before the gate and beg, and with regard to extrajudicial acts not included in this grant of power there is simply a petition of right. I make that distinction, otherwise I agree with Father Nolan.

Q. Have you made the study of the canon law of the Church a business, made it a special study?

A. Do you mean under a regular professor in college?

Q. No, no; have you studied it for information, have you made it a special subject for study?

A. I have; I have made it a very special study.

Q. For how long?

A. Well, I must say I would rather some other person would give the testimony rather than myself.

Q. How long have you made it a special study, sir?

A. Well, I have been studying it, intermingled with theology, at least for a quarter of a century, and for a number of years I have studied it very much, and during the martial law times of Pittsburgh here I paid particular attention to it, and I consider myself now competent to give a judgment on the questions at issue. I say this—I would rather somebody else would give testimony about it.

By the Court.—Q. What do you mean by the martial law of Pittsburgh?

A. Well, sir, the extra judicial deprivations, acts and censures made and directed by Bishop Tuigg to his priests.

By the Court.—Q. I would like to ask whether you have any remedy, and if so, what remedy for the alleged injury of Bishop Tuigg to you?

A. The only remedy that is here was the remedy of the kind what we call it, an humble supplication or petition, or if it would raise to the dignity, to the word complaint; merely to state the grievance and write to the Archbishop. Of course every person has the right to write to any body he pleases, but I have no compulsory power on the Archbishop at all. In point of fact I testify that I did so write to the Archbishop in the manner of a complaint, and I have it from Bishop Tuigg himself that the Arch-

bishop spoke in my favor to him within the very week that I had written.

By Mr. Marshall.—Q. The question the Court asked you was, is there a remedy, a judicial remedy, withinside the Catholic Church for the extra judicial act of the Bishop?

A. No, sir; there is no judicial remedy but for sentence; if the Archbishop can be induced to listen, he could write to Rome that such a priest is outraged and he does not know whether the priest is right or wrong, he has not a judicial sentence, and if there be any remedy at all appointed, it would be to transfer me back to the original power of the Ordinary or the council of the Bishop and to be tried, and there must be a sentence or acquittal.

By the Court.—Q. I would like to ask the plaintiff how you have obtained your support, whether you have obtained anything from the diocese or Bishop?

A. Not at all, not a cent offered from it. I have heard since the trial commenced, through the counsel of Bishop Tuigg, that Bishop Tuigg made an offer to my lawyer at one time.

By Mr. Marshall.—Q. You got no support?

A. No. No support.

Q. How have you lived?

A. Well, I had a little money. In Europe I applied to the Propaganda as my right for support as to the fact of being a missionary of Pittsburgh, and they, the head of the missionary world, while within their territorial jurisdiction that I therefore had a right to support from them, while there, in default of Bishop Tuigg. While they thought it was rather strange they did do so, and they supported me there and sent me back at their expense as becomes a gentleman. Otherwise I am not under obligations to the diocese for any support whatever. I have been without any support.

Q. Then it was the voluntary contribution of your friends?

A. Do you mean clerical friends or others?

By the Court.—Q. How have you lived, that is the question?

A. Well, it is the providence of God that feeds the sparrow.

Cross-examination.

Q. You don't know whether Bishop Tuigg sent any money to Rome for your support or not?

A. I have knowledge of the fact now through a letter presented by Bishop Tuigg.

Q. Do you know of your own knowledge?

A. No, no; not otherwise; never heard of it.

Q. Did the Propaganda inform you that he had sent any money there?

A. No, sir. I object. It is not a portion of my testimony. I got what the priests here know as "intentions," that is, there is a little stipend for officiating, for saying mass. I got the usual stipend for priests allowed on such occasions.

Q. That was for service?

A. It was by the legal authorities of Rome, and not by Bishop Tuigg.

Q. Did you ever hear of Bishop Tuigg sending money for your support? A. Never heard of it.

Q. Did you go to Rome on diocesan business?

A. I went on my own business.

Q. Do you think it was proper, going to Rome on your own private business, that the diocese should pay your expenses? If it is very private business you went to Rome on I don't desire to ask.

A. I went to Rome to complain of the outrage perpetrated on me by Bishop Tuigg.

Q. Did you present your complaint to any tribunal?

A. No; if you mean by tribunal a Cardinal Court; no.

Q. Did you present it to anybody?

A. I presented it to the Cardinal Prefect of the Propaganda, through the Secretary of the Propaganda.

Q. What became of your complaint, the submission of your complaint?

A. I have given my testimony.

Q. What disposition did they make of it, Father Sheehan?

A. They told me—there were several interviews—when I presented my testimonial of Father Hickey's, that is, by which he stated that I had received his permission to leave, that I had resigned my mission voluntarily and received no other, and that I was under no ecclesiastical censure. I presented that in the first instance for the purpose of recommendation, and got the recommendation of all priests immediately on presentation of it, viz.: officiated as any traveling gentleman, and when I stated that Bishop

Tuigg and his counsel said and stated that it was in the Council of Baltimore that I did not belong to this diocese and that it was in the Council of Baltimore that I was not there, they could scarcely believe it, and they came to the conclusion immediately that there was a *faux pas*, and they left it until they would write to hear what Bishop Tuigg had to say.

Q. Father Sheehan, I want to know what disposition they made of your case there? A. The disposition—

Q. Did the Bishop's answer arrive before you left Rome?

A. I have only a very general impression as to how or where Bishop Tuigg wrote to Rome about me, or, as to whether he did at all, and I only know what would be from interviews that, naturally speaking, Bishop Tuigg must have written. I never saw a letter of Bishop Tuigg's there.

Q. What disposition did they make—what was the conclusion?

A. The Secretary of the Propaganda called me in before witnesses and said: "We will send you home to your diocese," and this is what they would do. This was in the Latin language. I told him for as much to put it down in black and white that Bishop Tuigg—

Q. Put what down?

A. What we will do—the recommendation of the Propaganda.

Q. What did they say they would do?

A. I am coming to that. Then I made an objection to the Secretary of the Propaganda, or the sub-secretary, the Secretary for the United States and the Secretary for our country, and he told me in English that the style of the Propaganda was in speaking this way. I ought to understand this letter will get you your mission in the Pittsburgh diocese, and the letter to be written recommending that, and under these considerations I had no other objections.

Q. Did they give you that letter?

A. I am making this statement. They said: "We will write this letter." Then the letter was to be written that day to tell Bishop Tuigg that they had supported me in Rome for so many months; that they would now send me back; that I had made a spiritual retreat there.

Q. Where? A. In Rome.

Q. What place?

A. The Passionist Monastery in Rome, the only place under Victor Emmanuel where retreats can be made, unless there is another place picked out now for making a retreat. That they would send me home at their expense and with a pious hope, &c., and that I would be a good priest of the diocese, &c.

Q. A gentle admonition ?

A. Well, you can take it any way you please. This letter which I spoke of was sent to Bishop Tuigg, but he has not produced it here. This letter was written by the Secretary of the United States.

Q. Did you take the date of the letter ?

A. It was written about the commencement of September ; I didn't take the date because then I was shown the letter and I heard from, with the presence and authority of the Secretary of the United States of America, that that letter was sent to Bishop Tuigg.

Q. About September, 1878, you say ?

A. I don't really know, about that time, and the letters will be written, they all told me that that would procure me a mission—I spoke to a priest in Rome who well understands the intrigues that are going on there—I came home and wrote to the Archbishop of Philadelphia, and stating these facts that I had come home under the expense of the Holy See of the Propaganda, and I asked his kind office to acknowledge it.

By the Court.—That is what time ?

A. After I came home, about two years ago. When I came home I asked Bishop Tuigg, “here I am, what am I going to do?”

Q. What time was that ?

A. That was in the end of June, 1878 or 1879. I wrote him that I asked him, and I said, “Here am I, what am I to do?” “I don't consider you a priest of the diocese any longer.” I asked him, “What am I to do for a living?” “You know the country as well as I do.” “It is no question of knowledge, Bishop.” This was at St. Xaviers, and I even showed him then I wanted to be fair in every shape and form, and I mentioned this, I will go over there to that monastery and I will stay there as long as you please. “You go as long as you please,” was his answer. And I told him no one could be really kept from it ; and I told him so and he refused, and I did actually go the next day and was refused. I have asked for

every kind of support, and taken every kind of remedy and complaint, and I have come in here for the laws of my land against Bishop Tuigg's acts. If I have done wrong you will prove me guilty.

Q. I would like to know, as a matter of fact, what time you left Rome. You could not give us the dates the other day, possibly you could do it now?

A. I left Rome about—I can't remember dates.

Q. What I want to know is this, how long you were coming from Rome to Pittsburgh before you made the offer; how long you were absent from it.

The witness not being able to furnish the dates it was agreed that an adjournment be had and the question be asked at the next meeting of the court.

Adjourned to meet Wednesday, May 4th, 1881.

SESSION OF MAY 4TH, 1881.

By Mr. M'Kenna.—Since last night we have discovered the letter, referred to by the witness, among the archives, and herewith produce the original letter of Cardinal Simeoni, dated the 24th day of August 1878, and addressed to Rt. Rev. Bishop Tuigg.

It is admitted by the plaintiff that the signature of the letter is in the handwriting of Cardinal Simeoni.

Counsel for defendant also submit in that connection a *verbatim* copy of the letter in the original Latin, together with the translation thereof.

DR. QUIGLEY recalled.

Q. Doctor, is this a correct translation?

A. This, to the best of my knowledge, is a correct translation, and the transcript made by me from the original is also correct.

Letter and transcript admitted and marked Ex. No. 6, May 4th, 1881, W. A. S., Reporter.

FATHER SHEEHAN recalled and cross-examination continued by Mr. M'Kenna.

Q. At the adjournment of court I asked you the date of your departure from Rome and of your arrival at Pittsburgh.

A. I cannot give the precise date, but from my memory I can give it within a few weeks; I left in September, 1878, and I addressed a letter—

Q. The question is, when did you arrive in Pittsburgh from Rome.

A. It must have been—this is the day I spoke to Bishop Tuigg a few days afterwards. I stopped with the priests around in Westmoreland county, and I came in this date, June 26th, 1879. This is the date that I—I wrote to Bishop Tuigg previously, and he acknowledged an answer to the letter to myself, verbally, on the 31st of June of the same year.

Q. Can you give us the date when you arrived in New York?

A. Sometime in October, 1878.

Q. Where were you from October, 1878, to June, 1879?

A. The most of the time, I may say substantially the whole time, I was in Virginia with my mother, all winter, from before Christmas there, and I stopped there until after Easter.

Q. When you returned from your leave of absence from Cameron's Bottom, Bishop Domenec was Bishop then?

A. I got no leave of absence from Cameron's Bottom.

Q. I understood that you stated you handed in your resignation. A. That is a different thing from a leave of absence.

Q. Wherein does it differ? Explain that.

A. Well, a leave of absence is a permission, granted for a specified or unspecified, for a limited or unlimited term of time to leave your diocese and come back again to the position you are at at present. Resignation is a tender and an acceptance by the proper authority of the particular post you now enjoy, to be placed either in that post, if it suits the authorities afterward, or any other post. Because the Bishop has the authority and has the right to select in the diocese any post for the priest. We are all movable at his nod.

Q. How long a time intervened between your resignation and your grant of leave of absence?

A. A few months. I cannot remember at present. I cannot positively remember that.

Q. A few months? A. Yes, sir.

Q. Who did you say gave you leave of absence?

A. The Administrator of the Pittsburgh Diocese.

Q. In the absence of Bishop Domenec?

A. In the absence in Europe of Bishop Domenec.

Q. I want to understand when you returned from your leave of absence to this country—in other words, how long were you away?

A. I had that in my testimony before. I don't remember exactly.

Q. Was it approximately several years or months?

A. I was away years.

Q. Well, when you returned to the diocese, I understood you in your former examination, to state that Bishop Domenec was in control?

A. Bishop Domenec was in Pittsburgh when I returned.

Q. Where were you living in Pittsburgh at that time?

A. When I returned? Q. Yes, sir.

A. When I returned within the diocese of Pittsburgh I stopped for a few weeks, I think it is in Allegheny county or the boundaries of Washington, with Rev. Father Canon, and a portion of the time with Father Welsh, then I came into the city of Pittsburgh and remained here.

Q. You made no call here, yourself, on Bishop Domenec?

A. I didn't sir.

Q. How long were you here after your return?

A. It must have been within a week or a few days, I cannot tell exactly.

Q. From the time you returned here until you went to Father Canon? A. I came directly to Pittsburgh.

Q. Father Canon was not living in Pittsburgh then?

A. He was living in a place called Noblestown. I don't know whether it is in Allegheny or Washington county.

Q. When you came to Pittsburgh, why didn't you call upon Bishop Domenec?

A. When I arrived in Pittsburgh I called upon Father Hickey. He had in his own name the Administratorship.

A. Why didn't you call on Bishop Domenec?

A. I will give the reason why I didn't call on Bishop Domenec, if you will allow me. I called first on Father Hickey as a proper person. He was the person giving me my leave of absence. He was a Vicar General in his presence, and it was a well known custom of the Pittsburgh Diocese that he was acting Bishop here, that is, in their personal relations. He told me he would arrange all

matters in an interview with Bishop Domenec. I asked him "I will see Bishop Domenec myself," and he says, "Father Sheehan, you will not see him. I will arrange it all." A few days afterwards, all happening within a few days, without the knowledge of any person, and certainly not to mine, except on the evening previous, and of course it would not be proper time for me to go around to see a man then leaving for Rome. Bishop Domenec left for Rome and then he had everything prepared for the division of the diocese here, and hence there were particular instructions left that everything should be left as they were that way.

Q. Could not Father Hickey, who had charge of the diocese, give you the power of saying mass? A. I didn't ask him.

Q. If you returned in good standing why did you not ask him for it, or you say you asked for a mission. Why didn't you ask him for the special power to say mass?

A. I will tell you the reason, if the truth must be told. He says, "my hands are tied now." You got me to explain the reason. Father Hickey was under the express conviction that if he was willing to do what I was willing to take and I had a right to receive from him, that he would get himself into trouble, by the men who are giving him trouble now, or by some of the counsel of Bishop Tuigg; of course when I was refused a mission I could scarcely believe that Father Hickey had broken his word. I found out from his own testimony that he did not break his word. I never asked him, Bishop, priest or layman, for anything twice.

Q. Is it customary by the rules of the Church that a priest who leaves in good standing, with good credentials, on proper leave of absence, when he returns is required to get from the Bishop or administrator, special faculties for saying mass?

A. No, sir, it is not.

Q. Why did you make the application?

A. I made the application for the mission.

Q. Why didn't you exercise the functions of saying mass?

A. You want to confuse the court. The appointment to a mission is a thing to be asked, a particular post or congregation.

Q. I ask you the question why you didn't exercise the power of saying mass if you returned a priest in good standing?

A. For the simple reason when Father Hickey said, "I will attend to your mission. I will arrange it all, Father Sheehan."

When I asked him for the mission that of course included the necessity of saying mass. I asked him as having the right to have a mission, and when I didn't get a mission I didn't bother my head about it.

Q. Who promised you a mission ?

A. Father Hickey said he would arrange it all.

Q. You remained here six months before Bishop Domenec returned with the orders for the division of the diocese ?

A. There were orders here before Bishop Domenec returned.

Q. Father Hickey remained the administrator of the diocese, why didn't he give you the mission ?

A. No ; he had no power from the time the Bulls came.

Q. What time did they come ? A. Bishop Tuigg has that.

Q. You were here from the previous October ; what time in October did you get here ?

A. Well, you have given the date about the time ; I remember distinctly, however, that I was at Father Thomas Welsh's on what is called Rosary Sunday, and I was two weeks after that with Father Canon.

Q. Did you say mass there ?

A. I didn't ; I am not bound to say mass but four or five times a year, except when I am in active service.

Q. I want to find out, if you were a priest in good standing at that time, for what reason you could not say mass ?

A. There is no reason why I could not.

Q. You didn't ? A. I didn't ; I applied for a mission.

Q. As I understand you, you applied to Father Hickey for a mission ?

A. For a mission to take the place of the one, or substitute for the one, I resigned. According to Father Hickey's idea and mine, I could not resign my mission up there and not get another one.

Q. Would it not have been necessary that you should have had the faculty of saying mass, if you had been appointed to a mission ?

A. No, sir ; not by law or by custom, because, unfortunately, the power of the Bishop is such that if he is against you, he will scarcely give his father a dollar, or even a kind answer, and they are afraid to let any man say mass if they think the Bishop didn't like it. Father Hickey has a perfect right to say mass here, but there

is not a priest that will allow him in his church on account of Bishop Tuigg.

Q. But how with Bishop Domenec?

A. My relations and his, for a short time, were not of the friendly character that they had been before, and were afterwards, and he expressed afterwards, by word and deed, that he was sorry that he did have a misunderstanding; that he had been misinformed. They were the men that were trying to take his mitre off.

Q. Did Bishop Domenec give you any letters?

A. On two occasions while I was away I received letters giving me permission to stay.

Q. When he came back, on the occasion of the division of the diocese, did you see him?

A. I called on him more than once.

Q. Did he on any of these occasions give you any writing, certifying that he was mistaken about the past, and that you were in good standing, or anything of that kind?

A. He gave me permission to go into any part of his diocese. He wanted me to mention any particular place I wanted to work.

Q. When was that? A. When I was in Allegheny.

Q. Do I understand you to say that he gave you such a letter?

A. I didn't; I didn't say that; I said he asked me would I like to go some other place, and he said, Father Sheehan, you don't belong to the diocese and I couldn't take you in, even if it was a doubtful case, I couldn't take you in for the reason that Bishop Tuigg will say that I am taking all the rebels across the river, and Archbishop Wood has already decided about the Benedictine sisters, and he furthermore promised that he would write to a priest and he would give me some work for the reason the priest didn't want to give me employment. I will mention his name, and I will write for Father Brown in Clearfield, and Father Brown was afraid he would get into trouble also, and Bishop Domenec says, I will write another letter to Father Brown, and I says, Bishop, don't do it; I don't belong to you, and I will see my rights in Pittsburgh.

Q. How is it that Bishop Domenec regarding you as not belonging to his diocese could in conscience give you an office in the Allegheny diocese. A. That is quite common.

Q. Father ——— and these men were in Allegheny?

A. Yes, sir; I say that Bishop Domenec told me this, he said, you don't belong to me; I am willing to do anything for the old priests of Pittsburgh that I can; and it is quite common for one priest to go into another diocese, but he cannot go into another diocese and exercise his faculties without the permission of the Bishop.

Q. Was it proper without letters from your Bishop?

A. Under all facts of the case it was perfectly lawful.

Q. Did you, Father Sheehan, exercise the faculty of saying mass in Bishop Domenec's diocese?

A. I didn't for the reason that I didn't go to Father Brown's place.

Q. Was it necessary for you to go to Father Brown to say mass?

A. Unquestionably, every priest has a right to exclude any other priest from saying mass; Father Wall need not allow Father Kearney to say mass, if he wishes to, and Father McTighe cannot say mass in another church if the priest of that church doesn't wish it.

Q. What is the obligation on priests to say mass?

A. He is bound by the canon law to say mass about four or five times a year.

Q. Did you ever know of an approved priest, who is absent on a regular leave of absence, to come back and ask for permission to say mass?

Objected to.

Q. Father Sheehan, during six months from the latter end of October until the actual application to Bishop Tuigg, shortly after his consecration, in March, 1876, who supported you?

A. From what year?

Q. Well, from the time you returned from your leave of absence and found Bishop Domenec's diocese divided, from October until you made your application to Bishop Tuigg, after his consecration in March, 1876?

A. Well, I was stopping during that time with my sisters.

Q. You derived no support or maintenance from Bishop Domenec? A. Never after, at all.

Q. Never applied to him? A. Never asked him.

Q. You were not exercising then the duties of the ministry at all in that time?

A. I was refused a post or congregation by Father Hickey when he said to me, "I have no power to give it to you."

Q. Did you not know that Father Hickey was the administrator and that he had the power?

A. He said he had it legally in virtue of the office of administrator; he had the legal power, but that his power was restricted according to the specific request of Bishop Domenec. The administrator is like an administrator before court: the Bishop can lawfully grant him such and such powers and also restrict him from the exercise of others.

Q. Didn't he have full power?

A. Of course he had full power. He could do it, but it was restricted in accordance with the specific orders of Bishop Tuigg that there should be no change during his absence.

Q. Did you bring any documents from Rome; don't the victorious party in a suit in Rome get an authenticated certificate or copy of the decision?

Objected to.

A. It is customary where there is no regular suit of court to write to the Bishop and then give, it is what they call *curia*, but they do not want to give any document that he can show, any proof. I asked for the copy of the letter which the Bishop has produced, but they would not give it; it is against their custom.

Q. You left the impression, or at least you stated, that having submitted to an examination for five years after your ordination, that you were considered a perfectly qualified priest. Is that so?

A. Yes, sir; that is so.

Q. Don't you know, as a matter of fact, that by the laws of the Church, a priest without having stood these examinations can exercise all those faculties which you allege an approved priest has?

A. From year to year, yes, sir; but not in perpetuity.

Q. Does that perpetuity remain after he has passed his five annual examinations?

A. Until properly recalled; until the grant is expressly recalled.

Q. Who is to recall it? A. The Bishop is the proper way.

Q. Suppose after five years a man has these qualifications, how can he lose them?

A. He cannot lose them by any possible means at all until they are recalled in the proper way by the proper authorities. I hold in my hands the statutes of the diocese of Pittsburgh, and under the general law of the Church here is a special statute defining as to how a person is fully approved as a priest in the Pittsburgh diocese. "For this end, the administration of sacraments therefor, we will appoint examiners, and it will be their duty in the month of November to come together into the Episcopal city and there to subject all to an examination. Those who for seven years performed their sacred functions with praise are not to be subjected to this examination." That is when the law was enacted at the time those persons were exempt. "Those who are hereafter to be ordained, or those who have been ordained within the last two years are to be subjected for five different years before they shall be fully approved." Those who have performed their functions for seven years previous to that not also to be examined. "But with regard to those we will enact to each what we require to be done. Be it known that from the commencement of the year what will be the matter of examination will be made known, or the matter of examination will be made known to all at the commencement of the year, so that all persons will be prepared. The faculties of the diocese are granted to each priest only from year to year until he shall, as mentioned above here, be subjected to his examination for five years and be fully approved as to his examination, then only are the priests to be fully approved; so is a priest fully approved and faculties will be given them until recalled." That is, the first was, we give you the faculties from year to year, and, in point of fact, custom was when the year was out they were renewed by custom itself. There was no renewal by the Bishop.

Q. What is the title of that?

A. It is under the title of priests, and is with regard to the first *de personis*.

Q. Please explain what you mean by the term faculties?

A. Jurisdiction.

Q. Explain that?

A. The ordinary power of a priest in a Catholic Church is simply the saying of Mass, as a priest. His office as a missionary is different. For the office of missionary he has not in his ordination the requisition of jurisdiction. He must be attached to some

diocese or some place, and the person to give him a place is a Bishop. There are some powers given in his own congregation—certain extraordinary ones he gets from Rome—and these he gives to the priests, and they transfer the jurisdiction to give all the Sacraments to the people. And this jurisdiction, when the priest is approved in the Pittsburgh diocese, remains with him by statute law and by the general law until recalled. Before this statute was made the Bishops were accustomed to recall these from his priests at his pleasure, on the ground that they gave it and they took it away. But as the taking away is a practical denial of jurisdiction it is condemned by the law of the country and by the Plenary Council of Baltimore.

Q. You still haven't answered the question. What are faculties?

A. Jurisdiction to hear confessions, to give the last Sacraments, administer the Holy Communion, impose penance, etc.

Q. How about saying Mass?

A. That is not a faculty at all. I get that in my ordination. That is a divine right that comes from Christ according to the teachings of the Catholic Church, and the Bishop has no authority whatever over it.

Q. I want to know why you didn't exercise that faculty?

A. I gave an explanation before here. A priest is bound by the canon law to say Mass four or five times a year—that is, if he does not have an office for saying Mass. The Cardinals in Rome do not say Mass every Sunday. I wish to give an explanation of it. There is nobody in this diocese bound to say Mass every Sunday except when he is in a congregation but the Bishop. He is bound, because he is the parish priest of the Pittsburgh diocese.

By Mr. Watterson.—How many kinds of interpretations are there of the ecclesiastical law?

A. Well, as to kinds. There are various modes of interpretation.

By Mr. Marshall.—Is there one what is called usage?

A. Yes, sir.

Q. Explain that?

A. The usual interpretation—a law, however general, might by its terms and its application to a particular country, is only of such value and force as defined, or limited, or restricted in that country.

This does not arise on the ground that the nation, Church or diocese of the country deny the force of the Papal law, but because the Church acts by custom as regards the interpretations of various countries. For instance, it is quite a common thing to say that this Bull of the Pope is not received in France. Of course a Catholic cannot say that there is no power in the French Hierarchy to tell the Pope that you cannot send your Bull in here or your authority in here. Not at all, but if the Pope consents to the non-reception by custom of a certain Bull the restrictions of that law does not maintain in France. The same way with the usual interpretation of things here. There has been no appeals; for instance, with regard to extra judicial things in the most improper sense, that is with *gravamen*, a mere complaint, whatever the law might say about it in this thing might as well be thrown in the fire. No priest bothers his head about doing it, and he is looked upon as fool if he does. There is no appeal, no action taken upon it again and again, in other words the Archepiscopal Court is a nullity until you come before it with a proper appeal, and this same interpretation according to the customs of the country is classified by canonists as being the highest order of interpretation; it ranks with the Papal one itself, and the usual interpretation is handed down as having the same force and effect as the original Bull itself.

Q. Is the title explained by the *Instructio*?

A. Yes, sir. There is an authentic explanation of the doctrine itself; I hold in my hand Koning's Moral Theology which I will quote as an authority, referring to page 214 of the second book. There is in this title of mission, as explained by the instruction, besides a contract of a permanent character of the diocese there is a grant or there is a guarantee superadded, or rather previously added by the diocese for the priests. This is evident from the instruction itself. Where you lose this mission or title of mission it in substance says you must get another, and this other title must be gotten from the original grantor of the title, that is the Holy See. If the mere contract alone was all that was in the title, the mere contract for labor between the priest and the diocese alone was granted by this title, when the Bishop would give him his *exeat*, and when he would be received according to the laws of Baltimore into another diocese and received there forever by the Bishop of the other diocese, he would

have lost his title in his original diocese, and if the contract alone was only mentioned here in this title, in this title of mission as explained by the instruction, then he would have his title of mission in the diocese to which he was affiliated. That would be a necessary consequence, but it is in the instruction itself that he has not yet received, in the other diocese, a missionary title for the one he lost. That is, he must get it renewed again. The oath of allegiance that he swears to the title of his adoption, does not give him the mission. It gives the right to serve the mission, and so a man leaving is bound to substitute this title of mission for another title, and this is to be submitted by the Holy See itself. For instance I go into the State of New York and I get my *exeat* from Bishop Tuigg, or from a Bishop, and I am received forever by the Bishop of New York under all the formalities of the Council of Baltimore, and under them I lose my title here, because when I lose my title here I am bound by this Instruction to receive another title. The Bishop of New York cannot give me this title, and it is specially stated that it is not in the grant of the Pope to the Bishop. Giving a right to ordain to this title does not confer on them the power to give them a substitute. When they lose it it must be gotten by the new man from Rome. Consequently there is besides the contract entered into between the priest and the diocese an actual and I believe a previous, in point of time, transfer of property, as a guarantee of property to the priest, besides that mentioned here. I mention this for this reason, that all canons require as a condition-precedent to the ordination of priests a guarantee of decent support. The Bishop cannot say I will ordain a man and give you a provision next week; for if the Bishop tells you that it is not proper, and if he says I will ordain you to-day if you will never ask me for support, if he does that he is suspended for three years. According to all law there must be a proper guarantee of decent support before you can be ordained a priest.

Plaintiff rests.

SUR-REBUTTAL.

DR. HECHT recalled on behalf of defendant and examined by Mr. McKenna.

Q. The Court asked Father Nolan the question yesterday in reference to these extra judicial appeals to the Archbishop or Rome; the answer given to the question was that he was under the impression that it was a *matter of grace* with the Archbishop and Rome to hear extra judicial appeals, and the Court during the discussion seemed to be laboring under the impression that that was also your testimony. Without recurring to the notes I wish you would explain that portion of your testimony.

A. Now as far as the explanation is concerned, I understand that his Honor the Judge said that I had in my former examination stated that the right of appeal in those cases is not such that the Archbishop or Rome is *bound* to take cognizance of the case. Now I say that in the Catholic Church the Archbishop has judicial power over the acts of the Bishop in all cases stated by the canon law, and there are eighteen defined cases stated by the law. When appealed to in any of these eighteen cases it is not optional to receive the complaint, but he must then take hold of the case and give a decision. It is not optional with him. The rights of the Archbishop and the rights of the Pope are the rights of the people, and when duly appealed to, or when their aid is sued for, it is their duty to give the right according to the laws and canons. This is some Catholic canon law.

Q. Have you any authority on that?

A. In my first examination I have given the authority, and I refer to it again simply to certify and substantiate what I have asserted, and that is Riffenstuel. The eighteen cases, of which I have spoken, are there enumerated.

Q. I here hand you the author Riffenstuel, will you please give the page and paragraph of that book to which you have referred?

A. Page 428 and paragraph 29, Vol I.

Q. Were you here yesterday when Father Nolan gave an opinion as to the effect and force of the decrees of the Council of Trent as the laws of the Church?

A. I was here; yes, sir.

Q. Did you hear that?

A. I don't remember that.

By the Court.—On the other point I would like to ask you this question: Where a Bishop refuses to give a priest of his diocese an office, and where he refuses to allow him any support without assigning any reason therefor, has the priest a right to appeal to the Archbishop?

A. Your Honor, it is simply the omission of giving a man an office, it is simply a neglect of duty. Therefore the Bishop may be brought before the Archbishop to give an account for his neglect of duty.

Q. I read this question: Where a Bishop refuses to give a priest of his diocese a mission, and where he refuses to allow him any support, without assigning any reason therefor, has the priest a right to appeal to the Archbishop? A. Yes, sir.

Q. A regular appeal.

A. Yes, sir, a regular appeal, because it is the Archbishop's duty to correct the actions of the Bishop.

Q. What must the Archbishop do in such a case?

A. In such a case he must cite the Bishop to show cause why, although regularly applied to, he did not appoint the man as the plaintiff asks; that is the regular proceeding in law.

Q. Can an Archbishop refuse to receive it as an appeal?

A. He cannot.

Q. Is it what you call regularly an appeal or is it simply a complaint?

A. He brings a complaint and the Archbishop is bound to entertain it.

Q. Suppose the Archbishop did not entertain the complaint, what then? A. Then the complaint can be brought to Rome.

Q. Does all matter of complaint, to the Archbishop or to the Pope, raise the whole question in controversy between the priest and the Bishop, so that they will decide it in Rome?

A. Evidently they cannot decide whether the Bishop was wrong or right in refusing the appointment unless they compel the Bishop to give his reasons to show cause why he did that.

Q. Then, on the complaint to the Archbishop, in such a case as I have supposed, the Bishop is called upon to defend himself?

A. Yes, sir; he is the defendant and the priest in question is the complainant.

Q. And then if the Archbishop refuses, the complaint is made to Rome against the Archbishop?

A. First against the Archbishop and then incidentally against the Bishop.

Q. What would the authorities at Rome do in such a case, in a complaint against the Archbishop, what course does it take?

A. Your Honor, everything in court must be done in writing, that is the practice. They would send a copy of the complaint to the Archbishop. The Archbishop would be summoned to take the case in hand and to send in his decision.

Q. Would they at Rome consider first whether the Archbishop ought to have taken cognizance of the case. A. They would.

Q. They would first decide in Rome whether—

A. They wouldn't decide at all; decide whether he ought to. They would simply summon him in a summary way to do so, because it is his duty to do so without any further explanation.

Q. You say that on the mere complaint to the Pope, to Rome, without inquiring into it any further, they would simply, on his complaint, order the Archbishop to proceed? A. Yes, sir.

Q. Now, if you have any authority on that I would like to have it?

A. I have no authorities at hand—

By Mr. M'Kenna.—Q. State whether you have practically served on such a case.

A. I have seen a case practically conducted that way.

By Mr. M'Kenna. Q. Under the law? A. Under the law.

By the Court.—Q. I understood from the whole drift of the testimony from Dr. Quigley and Dr. Hecht there is always in every case an ultimate appeal to Rome. That I have understood all along, but I have not understood that on that appeal to Rome, without investigating the case, they will on that petition and appeal alone, order either the Bishop or Archbishop to proceed.

A. This is only a matter of fact. They will send the case to the Archbishop, and tell him to do his duty. They will not consider the case on its own merits until it comes through the regular channel.

Q. Wouldn't they first summon him—as you said they would summon the Archbishop to answer? A. Yes, sir—

Q. Would they do anything at all after his answer comes in—when the appeal is made from the Archbishop to Rome, when the Archbishop refuses to take cognizance of the case, and the party takes his appeal to Rome, wouldn't they summon the Archbishop to answer or cite him to answer?

A. They would summon him to do his duty in a peremptory way. That is the constitution of the Catholic Church.

Q. And then do they decide what his duty is?

A. He has judicial powers in the exercise of the law, and they simply refer him to the case, and say this is the case, please take cognizance of the case and decide it.

Q. Have you any authority on that, if so, I would like to see it.

A. I have not an authority with me. I think in any Catholic book speaking about the rights and duties of the Archbishop I could find the authority for the duties and rights of the Archbishop.

By Mr. McKenna.—Q. You will furnish such an authority before this case closes?

A. Yes, sir. [Book handed to witness.]

By Mr. McKenna.—Please turn to the chapter as to the duty of the Archbishop and his authority over his suffragans.

By the Court.—All this general quoting of authorities on general principles does not throw much light on the subject. Nobody questions the jurisdiction of the Archbishop, nobody doubts it, nobody doubts the authority here, that the party may make his complaint to the Archbishop, but the question is, is that complaint of such a nature as compels the Archbishop to take action, is it just like the right of appeal where the appellate court cannot refuse, but must take cognizance of it.

Now the case I suggest so as to give the principal application is where a Bishop refuses to give a priest work in his diocese, a priest of his diocese, and refuses to allow him any support, without assigning any reason for it, the question is in that case—is the Archbishop compelled on the petition of the party to issue a process, is he compelled to bring the Bishop to answer?

By the Witness.—He is compelled to hear all the cases that are provided for in the law.

Q. Is such a case as we have here provided for in the law?

A. Yes, sir; I have stated the point. The point at issue is whether Bishop Tuigg was guilty of a denial of justice—negligence in office. That case is distinctly provided for in the law.

By Mr. McKenna.—Do you consider these complaints against denials of justice as synonymous with extra judicial appeals?

A. Yes, sir.

Q. You take them as meaning the same?

A. I mean by an extra judicial appeal, every step, taken by somebody that has been wronged, to a judge who is the superior of both the one who has done the wrong and the one who has been wronged.

Q. Have you any other explanation to make on your testimony—viewed in the light of what Father Nolan testified yesterday?

A. Please state the point.

Q. A great criticism has been made here about the use of the term used by yourself and Dr. Quigley in your examination, viz: that a priest while working, or on a mission, has a right to support in justice, as distinct from one not working having a right to support in charity. Will you explain the use of those terms.

A. I am not aware, as far as I am concerned, that I made any mistake, because my statement, as it is on record, will show that I asserted, first, that a priest who is ordained has a right to a support from his Bishop when he is at work, and when he is out of work, without any fault of his own, he has a right to a support, again; a right in justice. The only way I can account for the fact that so much has been said about charity was that recommendation of the Council of Baltimore on the subject, which says that the Bishop is to appeal to the charity of the people, and he is to appeal to raise money for that purpose to the charity of the people, just as he has to appeal to the charity of the people for any other object in the Church, because we have no other right of taxation; we have no authority, assessors, or constable, or anybody else of that character.

Q. You state the use of the word charity is as to the way the money is raised?

A. Yes, sir; those means, or the ways to raise that money, are different in every diocese. Just as it is said that the ways of charity are innumerable, just so are the ways of raising money for charitable purposes innumerable.

Q. The distinction, then, is that the man who has a congregation or mission has a salaried office?

A. Well, sir, the man with a congregation has a definite sum of money for his support. Now the amount of that money is different in different dioceses: in some seven hundred dollars, in others six, and in others only five, and some go as low as four; but at any rate I want to stand correct on this point, not only before this audience, but before the country, that the priest who is out of office, without any fault of his own, has a right to his support, because I would not like myself to be a pauper.

Q. But that support is nevertheless, as you have stated, raised from the charitable collections of the Churches?

A. I don't see how the Bishop could raise money otherwise, because he has no power to assess. Now the State officers have the right to assess property; but what can a Bishop do. I would like to see the Bishop go and assess every member of his diocese so and so much for this purpose.

Q. You proceed by appeals for collections? A. Yes, sir.

Q. Is there any question in the Church about a priest who has retired, and renders no service, and brings a disqualification on himself to that support or charity or justice—

A. Well, that question has been answered in my direct-examination. A priest who, through his own fault, has disqualified himself has no right to it in justice because he loses that right.

Cross-examination by Mr. Marshall.

Q. I understand you to say that the Archbishop must take cognizance of the neglect of the Bishop, what do you mean by neglect. Do you mean if the Bishop lawfully refuses to support a man that that is neglect. A. Yes, sir.

Q. If a man wilfully does a thing, is that neglect?

A. It is a neglect of duty, if he wilfully does the other thing.

Q. That is your definition of neglect, is it?

A. Yes, sir, that is, neglect may be taken in two senses, it may be negligence without intention, and then in law or in moral theology we have a positive neglect, a neglect of duty.

Q. Neglect of duty is only a positive wrong, as any other thing, as I understand it. You say that a priest who is out of employment through no fault of his own has a right to support from the diocese?

A. He has a right to support from the diocese to which he belongs.

Q. And the diocese is the Bishop?

A. I am not prepared to answer yes—

Q. Do you say no?

A. Because the Bishop is the diocesan executive.

Q. He is the diocese? A. No; I protest.

Q. Is there any other executive ability in the diocese but the Bishop? A. There is no other chief executive but him.

Q. There is no order can be put into operation without his consent? A. No.

Q. Well, if it is due from the diocese is it not due by the Bishop?

By the Court.—Q. Isn't it the duty of the Bishop to pay all claims and debts of the diocese?

A. Yes, sir, it is, provided he is solvent.

Q. Has he not power to raise from the faithful in the diocese all monies that are necessary to pay the just debts of the diocese?

A. He has not the power, I say; he has no coercive means to compel the people to pay if they don't want to pay, he has the right, sir, he has the perfect right to prescribe on this or that Sunday a collection must be taken up for this or that purpose, but he cannot reach the pocket-book of the people, he cannot fix the amount.

By Mr. Marshall.—Q. If it is his right to support, and the Bishop has the only executive ability to supply that right, ain't it his duty to meet that right?

A. Yes, sir, he is bound in conscience.

Q. In law and conscience both?

A. In law and conscience. He is bound in conscience to endeavor by all means in his power to raise the money, but if having done all he could he don't succeed, it won't be his fault.

Q. Doctor, do I understand you aright in understanding your proposition that there is no distinction between an appeal after a trial and a mere complaint to the Archbishop?

A. There is a most definite and a most solemn distinction between the two, because in one case the complaint begins a trial, and in the other case it is supposed that a trial has taken place already.

Q. Yes, sir, that is my notion. Now, sir, do you say that an appeal ever can lie from the non-observance of the complaint; for instance, suppose I were a Catholic, and I would make the complaint

to the Archbishop in Philadelphia against the Bishop in Pittsburgh, and suppose the Archbishop would think it frivolous, and it were frivolous, how could I take the appeal to Rome if there was no trial?

A. You would have no right to appeal just for the same reason—

Q. Then, as I say, there is no appeal?

A. No, sir. There is the right to bring the complaint before Rome, and it would be attended to.

Q. Is it an appeal?

A. Not at all; it is a complaint against the Archbishop.

Q. It is a complaint? A. Yes, sir.

Q. No matter if the Bishop was satisfied that the complaint upon its face was frivolous—

A. What do you mean?

Q. Suppose I were a Catholic, and I would take offense at some act of the Bishop, and I would complain upon a frivolous matter to the Archbishop—

A. Frivolous matter?

Q. Unsubstantial. And the Archbishop would treat it with silence, would pay no attention to it, and I would go to Rome and make my complaint there; would the authorities at Rome order him to take cognizance of it?

A. The question is on the frivolous matter, do you put it on the frivolous matter?

Q. I just test your rule. You say that the complaint must be heard, that the Archbishop has no discretion?

A. A complaint is a serious matter. If it is a simple question of complaint, because this or that man didn't wash his face—

Q. I don't care whether it is that or not, or whether it is to cut a horse's tail off. Is the Archbishop bound to entertain any complaint made by a member of the Church? A. Yes, sir.

Q. Rome will compel him to hear it? A. Yes, sir.

Q. No matter how frivolous it is or otherwise?

A. Not at all. A frivolous question is no question.

Q. In other words, is the Archbishop the judge?

A. Not at all.

Q. Who is the judge?

A. I say a frivolous question is no question.

Q. Who decides whether it is frivolous or not. Is it the plaintiff, or is it the Archbishop, or is it Rome?

A. To say whether the question is frivolous?

Q. Yes, sir; to say—

A. The Archbishop can say whether the question is frivolous or not, and it depends simply upon whether *the case is provided for in the law*.

Q. Who is to decide whether it is frivolous or not, the Archbishop, or Rome, or the Bishop at home, or who?

A. The Archbishop has to say whether the case falls under his jurisdiction according to the canons.

Q. Then he has to decide it? A. No; the canons do that.

Q. Who is to interpret the canons?

A. The canons are the common law of the Catholic Church.

Q. Who is to interpret them?

A. The higher court, the Supreme Court of the Church.

Q. Now, I want you to understand me. A complaint is made by a member of St. Paul's Church, or Cathedral here, against Bishop Tuigg. It is made to the Archbishop and the Archbishop decides it too frivolous, and he should throw it aside. Will Rome ever look to him about it?

A. The same case may then be brought in the form of a complaint against the Archbishop at Rome, and Rome will look at it.

Q. Will they ever make him hear of it? A. Yes, sir.

Q. No matter how frivolous it is?

A. They will; I won't say frivolous, for I don't know what frivolous means.

Q. You don't? A. I don't.

Q. You are a Doctor of Laws? A. I know I am.

By the Court.—Suppose a priest of the Pittsburgh diocese makes complaint to the Archbishop, in reference to some conduct of his Bishop, and the Archbishop considers it unnecessary to cite the Bishop to answer, considers the case trifling, or considers the Bishop did right, or without anything further, dismisses the matter without citing the Bishop. Has he the power to do that? Where he thinks the case is not of such a grave character, can he then dismiss it?

A. I don't think it lies within his discretion.

By the Court.—I would like to get an answer to that question. Now I put the case where the priest complains of some matter of his Bishop, and the Archbishop thinks it trivial—not worthy of

consideration—is he bound to cite the Bishop and ask him, or can he dismiss it?

A. I don't think he should dismiss it; I think it is his duty.

Q. You think it is his duty, in any event, to cite the Bishop?

A. To cite the Bishop and give a hearing.

Q. You say that no matter what the complaint is, the Archbishop is bound to cite the Bishop at once?

A. The point is, and I must always insist on it, that the Archbishop's jurisdiction over the limits of his province is limited to the cases defined in the law. I said that, time and again, and therefore that question of frivolity is out of place. The power of the Archbishop in judicial matters over the Suffragan Bishops are enumerated, especially in law, in the canons.

By the Court—Where there has been a trial by the Bishop, and sentence, and a regular appeal entered, has the Archbishop any discretion whatever? Must he not hear that appeal?

A. I don't think that sentence would be passed upon a frivolous matter.

Q. I have said where there was a trial, and sentence by the Bishop, and a regular appeal entered, has the Archbishop any discretion in that case? A. No, sir; he has not.

Q. He is bound?

A. He is bound to take cognizance of a case appealed to his court from a lower court.

By Mr. Marshall.—Q. He cannot say that is frivolous?

A. No; he is bound to hear it in any event.

Q. Now where there has been a complaint made, and where there is no trial, no sentence, but a mere complaint, is he bound in the same sense to hear that as in the other case?

A. Yes, sir; when it comes within the eighteen cases specified in the law.

Q. The eighteen cases?

A. Some say more and some say less, but the eighteen are generally admitted. *This* case is negligence by denial of justice.

By Mr. McKenna.—Q. Then the refusal to appoint to an office would come in these eighteen cases?

A. There is no doubt if the Bishop claims that he had no right to the appointment. I don't see any other claim that he could bring.

By Mr. Marshall.—Q. He might want a just title.

A. Just as I said, the right depends upon whether he is qualified for active duty or not, and if he is disqualified there is no wrong done and he has no right denied.

By the Court.—Q. I understand Dr. Hecht to differ a little in his previous examination from Dr. Quigley. He said the right resulted from the performance of the duty, and where the man has performed the duty it is his right.

A. That man has a plainer right than the other one, but nevertheless I agree with the counsel on the other side that a priest out of a mission, out of work, has a right in justice to support.

Q. His right to support don't rest on simple charity in a case of that kind? A. Not at all.

Q. It is a just claim? A. A just claim.

By Mr. Marshall.—Q. It is a just claim?

A. A just claim; and then that claim has to be made as far as it can be—like every man who is, as it were, in debt—out of the diocese, and if you want to collect off the diocese, it is through the Bishop, and then the Bishop is bound by all means to use and to exert all the powers he can in order to secure the payment of that debt.

Q. Doctor, when a priest is away traveling over the country, is he not still under the jurisdiction of the Bishop?

A. Yes, sir. What do you mean?

Q. I mean that he goes into no other diocese?

A. As long as he is affiliated to the diocese he is a subject of the Bishop's as a person, wherever he be, either let him be in the diocese or be out of the diocese, he will always be a subject, because if he were not a subject he would not belong to the Bishop or diocese.

Q. Then he is under the supervision as well as the jurisdiction while away?

A. He is under the supervision of the Bishop just as he was at home.

By Mr. Moore.—On returning after long absence, is the Bishop not entitled to an account in writing of the various places where he has been concerning his good behavior?

A. He is under the supervision of the Bishop all the time, and, therefore when a priest is outside of the diocese the Bishop has but

one way to perform his duty, as far as the superintendence over the priest is concerned, and this is through the local authorities of the place or of the countries in which, during his absence, he went.

By Mr. McKenna.—An applicant for a mission who has not been asked to produce credentials, a priest of the diocese, is bound to show them, without asking, to the Bishop?

A. Without any doubt. The Bishop has no right to appoint a man he does not know.

By the Court.—A priest in good standing has permission of the Bishop to be absent for six months or six years. When he returns, is it the presumption that he returns in good standing or in bad standing?

A. The presumption is neither one way nor the other as to whether the gentleman has lost his character while absent with the sanction of his superior.

By Mr. McKenna.—Doctor, has a Bishop any other way of ascertaining the good behavior of a priest visiting strange countries or remaining a long time in this country, outside the jurisdiction of the diocese, except through letters testimonial from Bishops?

A. The only proper way is that a priest who is in any other diocese outside of his own receives authorization from the local authorities to say mass, or to perform other functions; but when he comes back he evidently should show letters from the Bishops from whom he had the authority to say mass.

By the Court.—Without being asked?

A. Without being asked.

By Mr. McKenna.—That must be in writing?

A. In writing. There is no permission of that kind except in writing. We have a whole chapter in canon law about letters, &c. I don't know how many authors.

By the Court.—Suppose that a priest was absent with the leave of his Bishop without getting any letters, another Bishop appointed him to a mission, would that be against the law?

A. Yes, sir; that would be appointing a man to office without knowing to a certainty by documentary evidence that the man has the qualifications prescribed by the canons.

Q. Isn't it the Bishop's duty to ask him for these if he is in doubt as to the priest's qualifications?

A. It is his duty to ask for papers.

Q. If he has no reason to believe that there is any doubt about the man's character must he still ask for them?

A. If he has no reason whatever to doubt the priest's qualifications he will not ask, but if he has any doubt whatever he is bound to ask.

Q. Suppose he didn't ask, isn't that a fair inference, then, that he has not heard anything against him, and there is no doubt about his standing?

A. That question can only be solved by the further action of the Bishop. If, without asking, he appoints him, he grants that he has not heard adverse reports, but without this action the presumption is that he has heard such reports.

Q. Well, if you have any authorities to show a case of the kind suggested, that it is the duty of the priest on his return to present such evidence without asking, I would like to see them, and in that connection I would ask this question: Is a Bishop directing a priest to retire to qualify himself for an appointment bound to ask him for his credentials then, or defer it until he gets through his religious preparations for it?

A. It is evident that to call for the papers to qualify a man for a mission—that is the question at issue—he is bound to ask for such documentary evidence only to justify the act of the appointment. He has no use for the papers, unless the papers are necessary for an appointment. He refuses the appointment, and refuses to consider it until the man first complies with the directions suggested.

By Mr. Marshall.—Suppose Father Sheehan had got a six months' leave of absence from Bishop Domenec, and he had gone to Virginia and had fallen sick in his mother's house, and laid in bed sick, and then came right back, who would he have brought the certificate from?

A. If he has lived within the diocesan limits of Richmond, Virginia, then, if he has said Mass or performed any Ecclesiastical function in the Church, he needed the authorization of the Bishop therefor, and he had to get into communication with the Bishop. If he has not, the case is out of place.

Q. Answer my question. Father Sheehan goes down to Virginia, falls sick, lies sick for six months in his mother's house, and he comes back as soon as he was able, has he to present a testimonial

when he comes back, and if so from whom? His mother's servant girl, or who?

A. In this case he would have to show some way or another—

Q. Who would he get it from?

A. Suppose he had been laying sick in the diocese—he has not seen the Bishop, he has not been out of his house or out of his home. In this case I don't think it would be necessary to show any papers, provided it was the fact that he was sick all the time in bed.

REV. DR. QUIGLEY recalled and examined by Mr. McKenna.

Q. Doctor, I would just ask you have the Baltimore decrees the force of law as to all their parts?

A. No, sir; neither in this country or in any other part of the world. I would like to say a word in explanation. There is an old axiom in law to the effect that in judicial matters only that comes from Rome which has gone to Rome. In other words, the judicial action upon any question is only such as meets the matter actually submitted. Now those decrees were sent to Rome as they were framed by the legislative body here. In that legislative assembly they enacted certain laws, but together with those laws there are embodied in the acts and decrees of the Second Plenary Council quite a number of paragraphs which have no force of law at all, because the legislators never intended to give them any such force. Consequently the Roman approbation, revision, or recognition which they have received, leaves them in the condition in which they were originally when they came from the hands of the legislators at Baltimore. In fact many numbers or decrees have the force of law. Others have only the force of recommendation, advice or exhortation. To give a distinctly categorical answer to your question, only those decrees of the Council of Baltimore which were intended by the Bishops at Baltimore as laws, have the force of laws. Those decrees which were not intended as laws, are not vested with the force of law. The line of distinction arises from the tenor of the individual numbers or decrees themselves; usually there are words in the decrees which designate whether they are laws, such as "enact," "the common law," etc. Such words as, "we advise," "we exhort," etc., show that the Fathers of Baltimore did not intend while using such language to exercise their legislative authority.

Q. Doctor, has the word, "indulgemus," in the Pittsburgh Statutes, as to the increase of salaries, the force of law, or is it an enactment as was testified here?

A. No, sir: it has not the force of law. Interpreted under the rules which I give for the interpretation of the law, it has not the force of law, nor of an enactment. It is simply a *permission*.

Q. Was the Baltimore decree of 1877 superceded by the Roman *Instructio* of July 20th, 1878?

A. It was not, sir. My proof of this negative response is found in the authoritative interpretation of that Instruction sent to this country in answer to many doubts submitted to the courts at Rome. In one of those doubts the question put was this: "Does this Instruction of itself abrogate or supercede No. 77 or No. 109 or No. 125 of the Second Plenary Council of Baltimore?" The answer given was, "By no means." Proof of this is found in the document presented here, as containing the official Roman decision as to these doubts.

Q. Does this Instruction provide for trials?

A. It does not. The word trial is not mentioned in it, except in reference to some other regulation in which there is found provision for a trial, nor is any provision made in the Instruction for JUDGES. No one by force of that Instruction is vested with the judicial power required to pass sentence. The words of the Instruction are these: "This *investigation* is not a judicial trial, but is to be conducted so, and unto this end, that with all possible diligence a proper opinion as to the facts in the case may be reached by the members of the commission of investigation." When such opinion is secured it is to be submitted to the Bishop of the diocese, who is vested with authority to repudiate it entirely, should he see fit so do so.

Q. Then it is not a *quasi* trial?

A. It is not even a *quasi* trial. as the examiners have no power to pronounce sentence. I heard it claimed here that that Instruction provides for a barrier between the Bishop and any priest that he intends to remove. The words of the Instruction are: "*Quod si de alicujus Rectoris missionis remotione agatur*—Whenever there is question of the removal of the rector of a mission." Now one of the doubts submitted was: Does this mean whenever there is a question of removing a pastor from one congregation to another?

The answer came saying that this applies only to the case in which there was question concerning *remotione definitiva*; in other words, of ousting one entirely from the charge of a parish.

Q. It don't apply to transfers at all?

A. No, sir; the civil courts recognize examiners that are not vested with any judicial powers, and so with these examiners, and even this, only in case of final and permanent removal.

Q. *By Mr. McKenna*.—Can there be a canonical appeal in a case in which no trial was had?

A. Under the general law, there cannot. The general law is this: an appeal strictly so called, a canonical appeal, can be had only when there is a question of a case already submitted to a court, in which a sentence has been pronounced. But though this is the general law, the canon on this says that there is no, strictly speaking, canonical appeal without a trial when there is question of the case in which no trial was had, excepting in the cases provided for in the canons. Now my authority for this is Reiffenstuel. Universal Canon Law, volume 1, of the Paris edition of the year 1864, page No. 210, there we read: "The negligence of Prelates relates generally to those things which regard jurisdiction, contentious and voluntary. Contentious, exercised towards those who oppose, v. g., oppose inflicting punishments, etc.; voluntary, towards those who are submissive, v. g. ordinations, providing benefices, etc. On account of his negligence does the power of a Bishop devolve upon the Archbishop universally as to all causes? This is a celebrated question, even yet controverted among the masters. The negative opinion is the more probable. The more probable teaching is that the power and jurisdiction of the Bishop devolves upon the Archbishop only IN THOSE CASES EXPRESSED IN THE LAW. Here there is a question of matters prohibited; but in matters prohibited, it is understood that that which has not been expressly granted, is prohibited. Thus, Barbosa, Pirhing, etc." Reiffenstuel, *Is Canonium*, Volume I. page 425.

Again, in Reiffenstuel, vol. 1, p. 426, we read: "What is to be done in case of the neglect of a Bishop? Although, to supply the negligence of a Bishop, one can not, in the first instance, go to the Archbishop by way of a simple complaint, nevertheless, the Archbishop can be approached by way of an appeal, whenever it appear that the subject of a Bishop has been gravely injured by the Bishop's

neglect ; for the remedy of appeal is, generally, granted to all to repair a *gravamen* unjustly imposed by the judge. Again, the Archbishop can be approached, not, indeed, to supply the neglect of the Bishop outside of those cases so provided for in the law, but to compel the Bishop unjustly neglecting to rightly perform his duty. It is not to be wondered at that the Archbishop can so compel the Bishop unjustly neglecting, for by Metropolitan law the Bishop is subject to the Archbishop."

This is the general teaching of canonists, and establishes the fact that there are cases in which an appeal lies to the Archbishop, against certain injustices inflicted by one's Bishop.

Reiffenstuel, vol. 1, p. 427, says, that forty cases are recounted in which this jurisdiction obtains. But in vol. 2, p. 8, the same author thus enumerates, as eighteen in number, the chief cases mentioned in the law :

*"Officium varium, forus, appellatio, crimen.
Peccans; non parens, res, consultatio, deses
Præsul, canonici tumidi, sententiam nequam.
Visitat, indulget, custos, quia Papa dat, usus,
Permutat sociis, suspectus cumque remittit.
Casibus his primas subjectos præsuli sarcet."*

Reiffenstuel continues—"The first case is: When a cause is referred to the Archbishop by an appeal, that is, whenever the Archbishop is appealed to legally against a sentence, or against a *gravamen* imposed by the Bishop. The second case in which an appeal to the Archbishop is allowed, is when he visits the Province. The third case is to supply the neglect of the Bishop. This case exists whenever the Bishop is negligent in that which he ought to do." In speaking of these cases of neglect, vol. 1, p. 427, Reiffenstuel says among the cases of neglect is the case: "In which the Bishop has been neglectful in conferring Church benefices." Either of these cases covers the case now under consideration. I will read another one that appertains to this case. The twelfth rule is: "When it is notorious that the sentence of the Bishop is unjust," l. c. p. 9. Our law recognizes a two-fold notoriety, a notoriety of fact and a notoriety of law.

By the Court.—I would like to know when the sentence of the Bishop is notoriously unjust. Who is to test that?

A. It may be tested by the ordinary course by which we test notoriety of the injustice of the court that has jurisdiction. We have an example of this notorious injustice in an excommunication pronounced on one after he has appealed to the Holy See from censure threatened. By appeal against a sentence or censure threatened and not yet inflicted, one deprives the Bishop of power to act until his superior has passed upon the case. I might go on to cite many other cases in which an appeal proper is according to the law. But the cases given are quite sufficient to show the court whether Father Nolan truthfully gave evidence as to the law when he stated that there was no case in which an appeal could be had until after trial. His claim that there is no practical remedy provided in law for grievances of priests in this country, is clearly against the law, and I consider it a monstrous calumny against our Church government.

By Mr. McKenna.—Then according to that authority you say that there is a law in the Catholic Church providing canonically for appeal, even where no trial has been had in the inferior court?

A. Yes, sir, I do. Furthermore, I say this law is universally admitted by all who are conversant with canon law.

Q. You say that authority is not disputed by any other authority?

A. I never saw it disputed. The so-called evidence offered here against this law was not substantiated by any authority whatever.

By Mr. Moore.—I would like to ask you if, following that opinion with reference to the powers of the Archbishop, there is an index to decided cases reported there?

A. The author enumerates the different cases, and under each heading refers to decisions of Popes and the testimony of canonists as to the Church law, by force of which there is established exemption from the general law requiring trial before appeal.

Q. Then I understand these eighteen cases illustrating the power of the Archbishop over the Bishops are cases that have been decided by the highest authority of the Church?

A. I cannot claim that all those cases were decided in general councils, yet unquestionable canons and authorities universally admitted, establish the law for these cases.

Q. Not mere opinions?

A. Certainly not. All Church courts must accept them?

Counsel for defendant offer in evidence the authorities referred to by the witness.

Q. Is it not one of these cases in which it is made a duty of the Archbishop to review any act done by the Bishop towards the cleric which amounts to a denial of justice?

A. Yes, sir; that comes under the third case of which I have furnished a translation.

Q. Does the mere fact of being a priest establish the right to support?

A. No, sir. I heard Father Nolan's statement regarding this question, and it is this: The mere fact that one is a priest vindicates to him the right to his title of support unless canonically deprived of it. Furthermore I understand him to allege that that canonical deprivation could be effected only by censure or irregularity. This is a repudiation of our law in the matter. In my direct examination I produced a translation of the Roman law, which says, that as soon as a priest abandons the office of a missionary he loses his title. Abandoning the office of a missionary is neither suspension nor irregularity, yet Rome decides that this deprives one of the title of a mission. The Pagan phrase "in good standing," is unknown in canon law. It was perhaps convenient to use this phrase rather than invoke the legal phraseology, viz: being free from censure, irregularity, and vice, and actually possessing the sacerdotal virtues. I stated in my direct examination that being free from censure only grants the negative part. An illustration—when a man's hands are not tied they are loose, and he is free to go to work; but because a man's hands are in manacles it does not follow that the man is a most accomplished sculptor. The law decides that being possessed of freedom from impediments or the negative part is not enough, but that one shall be positively possessed of the required qualifications, without which no priest is "in good standing," or has any right to expect an appointment.

Q. You can give your authority?

A. The authority is, we will say for the present, Dr. Smith's *Elements of Ecclesiastical Law*, chapter 8 on ecclesiastical dignities and offices, pages 152 and 153.

Q. Were there any tribunals in this country before the Baltimore decree number 77?

A. Certainly, sir; there is no perfect society without tribunals.

Q. I understood Father Nolan yesterday to state that there were none.

A. He did, and in doing so he repudiated the Constitution of our Church, as set forth in this grandest work of canon law, by Cardinal Torquini, who, in his Treatise on the Catholic Church, proves that, like every society, it is possessed of the three-fold powers, Legislative, Judiciary and Executive.

By the Court.—Q. I understood Father Nolan to testify that there was no trial proper until the decree 77.

By Mr. McKenna.—How is that, Doctor, were there any trials provided for in the Church tribunals before the Baltimore decree 77?

A. There were trials provided for before the law contained in Decree 77 of the Baltimore Council of 1866, as is shown by every standard work on Church law. To mention one, the Council of Trent, recommended by the Provincial Council of St. Louis in '55, eleven years before the Baltimore Council. There were trials provided for by the very constitution of the Church. No one ever properly applied to our Roman tribunals and failed to obtain a trial.

Q. Doctor, does the trial depend upon the caprice of the Bishop?

A. By no means. The right to a trial depends upon the provisions of the canons of the Church. Should any Bishop, capriciously, repudiate those canons, appeal affords ample remedy.

By Mr. Moore.—I would like to refer you to a question of Judge White's this morning, to get something like a definite answer to it. Suppose a case were taken by a clergyman to a Bishop and he should say one thing or the other, just as you choose, and the Archbishop should be appealed to, there was a complaint. I don't care what term you use, could the Archbishop, or Bishop in the first place, dismiss the case, of his own motion, without opening it and examining it through witnesses?

A. He could in given cases, in other cases he could not. The cases in which he could are mentioned by the law of the Church. In my direct-testimony I showed the law which rules out fifteen cases as deprived of the right of trial; one of those cases is the case when a frivolous matter is in question. I stated in that examination that although the matter may be frivolous, yet, when there was a question of injustice regarding a man, even though it be but five dollars, it will be heard when an appeal is taken against the injustice of the sentence.

Q. Then the Bishop determines what is frivolous?

A. Why, the canons determine what is frivolous. This I explained in my direct-evidence. Outside of these cases the Bishop cannot, under the law, refuse. Should he dare to refuse, he is amenable to the higher courts of the Church.

Q. Under the case number three referred to by you, is he obliged to give a trial or receive the appeal, and if he does not, is he amenable?

A. He is, sir; by the oath of his office he is bound to administer according to the canons; whenever the canons do not deprive a man of trial, the Bishop is bound to grant it. If, however, he should fail to do it, he is amenable to the court of his superior here, or in Rome.

Q. I understood you the other day to give fifteen exceptions to the right of appeal from alleged injury; that in those fifteen exceptions there is no right of appeal. Who is to decide whether the case comes within one of these exceptions?

A. The law, the canon, in every case is so plain that there is scarcely a reasonable possibility of there being any misunderstanding, and I think, from the explanation I submitted from Reiffenstuel, it was apparent in every case what was the object of the canon.

Q. Still, some one must decide that question. Who decides it?

A. Authority.

Q. Who is authority?

A. The immediate authority is the Bishop, next the Archbishop, then Rome.

By the Court.—Q. The question is this: There are fifteen exceptions, and these exceptions are not specific but they are generic terms; they are classes of cases, each one of these exceptions; there are fifteen classes of cases where there is no appeal to the Archbishop. Now when a person complains to the Archbishop of an alleged injury or wrong committed on him by the Bishop, who is to decide whether the Archbishop is to consider that complaint, whether it comes within one of the exceptions?

A. The Archbishop is to decide as to whether he has jurisdiction. Should that decision impose a grievance, let the aggrieved party appeal to Rome.

By Mr. McKenna.—On that question now of jurisdiction. Suppose, in the case called frivolous, the Archbishop should decide and

the person making the complaint should differ about its triviality or frivolity, has the person still a right to call in question the decision of the Archbishop to dismiss it?

A. Well, I distinguish. He has a right founded on fact, I don't claim that. That is to be decided by the court. He has a right subjectively; he thinks he has a right. I grant that may be. In that case the court to which he would appeal would decide in keeping with the rights of all.

By the Court.—Just on that point I would like to ask the witness a question. Suppose the Archbishop should refuse to interfere in the matter, and the injured party make an appeal or make his complaint to Rome, would Rome then pass on his complaint and direct the Archbishop to proceed with the case?

A. Well, sir, not necessarily. If Rome found that it was a case in which, according to the canons, the Archbishop had jurisdiction, Rome would, except in special cases, require the Archbishop to sit in judgment on the cause; but Rome would not necessarily do so, because, as I have stated in my evidence as to the laws on appeals in general, there is a direct appeal from the lowest subject in the Church to the highest tribunal in it.

Q. But in that point I have just suggested your opinion is not exactly with Dr. Hecht?

A. I have only this recollection of the law in the matter.

Q. I understood Dr. Hecht to say that when the Archbishop refused to act the injured party had his remedy by complaint to Rome, and that then, without calling on the Archbishop to answer any further, but simply on a complaint of the injury made it imperative, and directed the Archbishop to proceed with the case. I didn't so understand previously, and hence Dr. Hecht's testimony was a little of a surprise to me. I understood you to say that they would not in a case of that kind direct the Archbishop to proceed until they made some investigation of the case and they believed the injured party had a right, and then they direct him. That is your answer, is it? A. Yes, sir.

Q. What authority is that you gave?

A. The book I have just quoted, Reiffensteul, vol. 2, page 6 and following, where there is a question of the jurisdiction of Archbishops over Bishops.

By Mr. Moore.—Where are those fifteen exception—in the same work ?

A. The fifteen exceptions are found in the same work, but in another volume, as I have stated. Vol. 3, page 348.

By Mr. McKenna.—Doctor, I understood Father Nolan to testify in chief yesterday that in this country, outside of actual trial, there was no remedy for the aggrieved party against his Bishop ?

A. That is against the canons I have referred to.

By the Court.—I understood Father Nolan to testify that there was no sufficient, adequate remedy—no practical remedy.

By Mr. McKenna.—On that subject, for a practical remedy. Is there a practical remedy or not ? You may state what provision is made for urgent cases, where there is a question of poverty, to expedite them for trial ?

A. Yes, sir; it is the practice of our Church to remedy every wrong. The duties of the Propaganda require them to proceed as soon as possible, and furthermore, there is no question whether a man is poor or rich, it does not cost him more than the postage stamp to take his complaint or appeal to Rome.

Q. I believe they don't take oral testimony—the trial is on paper ?

A. I distinguish. The Court of the Propaganda does admit the process usually prescribed in canon law in questions of evidence on trial to call in witnesses and singly examine them, and take their depositions orally in the presence of the court, advocates, etc. That is allowed. But in taking a complaint or appeal from this country the way is to submit the case in writing. The regular trial demands, I think, that documents be submitted.

Q. Then, from the authorities, it is your opinion that an extra judicial appeal, humble complaint, remonstrance, or anything of that kind on the part of the injured, or alleged injured priest, setting forth a denial of justice, or neglect of duty does lie from the Bishop to the Archbishop ?

A. It is not my *opinion*, the philosophical sense of that term. But *I am certain* that such is the law regarding appeals.

Q. I mean to say, does it lie as a matter of right or of grace ?

A. As a matter of right.

Q. Does any law of the Catholic Church authorize a priest to judge of or disobey the canon law as interpreted by the Bishop and afford as a remedy therefor rebellion or disobedience to his Bishop?

A. No, sir. There is no law in the Church providing for rebellion or any disobedience whatever as the remedy against an abuse of authority. The remedy against abuses of authority is chiefly the appeal.

By Mr. McKenna.—Well, Doctor, is there any authority in the Catholic Church which provides that a priest should set in judgment upon the Bishop?

By the Court.—If you want to contradict Father Nolan this would be the proper question: Suppose the Bishop commanded him, in violation of the canons of the Church, to do something, would he be bound to obey him?

A. Well, I must answer that by a distinction. If the Bishop would command him in what Father Nolan considered as a matter of opinion, a violation of the canons of the Church, Father Nolan would not be justified in resisting. If the Bishop commanded him to do what the Bishop considered not a violation and, in fact a matter about which there was a dispute, the law provides that the priest must submit until a decision is rendered by a superior court reversing the decision of the Bishop's Court. The axiom is, "in matters of doubt the presumption stands for authority." In this, however, we must not confound questions of opinion, and questions of principle. Should a Bishop attempt to command what is indisputably, *against the law*, we must hold that such command is not vested with any authority whatever, and must be withstood. Let me add, in this connection, we cannot grant that there is jurisdiction whenever the Bishop revoke it. The revocation of jurisdiction depends solely on an act of the Bishop's will.

Q. You say that the revocation of the jurisdiction depends upon the Bishop's will. A. Yes, sir.

By Mr. Moore.—Q. Explain that.

A. Whenever a Bishop says to a priest, lawfully or unlawfully, justly or unjustly, I hereby revoke your faculties to hear confessions in this diocese, the priest has no more faculties in the diocese, excepting in the cases provided in the canons, than a little girl.

Q. Your authority?

A. Any theologian who has written on penance. I refer to Konings, Art. 2d, page 129, vol. 2d, of the edition that is known as the 4th edition, that "jurisdiction to hear confessions expires when it is revoked by one's superior." This is found in the treatise on Penance, No. 393, in Roman letter 5.

By the Court.—Q. If I understand your opinion, it is this, in reference to jurisdiction. The right of a priest to officiate as a priest in any particular congregation is dependant wholly upon the will of the Bishop, is it?

A. Well, no, sir. The right of a priest to officiate in any given congregation depends upon the canons of the Church, but the Bishop has power, lawfully or unlawfully, justly or unjustly, yet validly to revoke the jurisdiction in such a way that the priest has no authority whatever to hear confession.

By Mr. McKenna.—Q. All subject to the right of appeal?

A. No, sir, it is not the subject of appeal, because a subject of appeal supposes that enforcing one's right is simply suspended. But revoking jurisdiction absolutely destroys it as to the man that possessed it; and before he can ever enjoy it again, the Bishop, or his equal, or his superior, must, by special act of his will, confer the power of jurisdiction.

By the Court.—Q. That is, the right to officiate in any way as a priest in any congregation in the diocese?

A. No, your Honor; the right to officiate as a priest in any way may refer to simply preaching or celebrating the mass.

Q. This extends only to the higher duties?

A. This doctrine extends only to the sacrament of penance.

Q. *By Mr. McKenna.*—Well, to carry out the thought in reference to the priest here. Can the Bishop of his own will suspend the right of a priest to a support in the diocese?

A. Well, he can and he cannot. He cannot in the sense that he can actually alienate those rights regardless of the qualifications of the priest; and he can in the sense that by force of his power as a judge, he may pronounce as to whether or not those qualifications have been lost, as to whether or not the title to support still continues.

Q. *By the Court.*—He cannot, except for just cause, suspend the right of a priest to support. In the other case you said justly or unjustly.

A. Excepting for just cause the Bishop never can declare, either lawfully or validly, that the priest's right to support has been lost.

Q. *By Mr. McKenna.*—It was testified here yesterday, as I understand, that the presumption is that the requisite qualifications on the part of a priest, long absent from the diocese, continue, if his leave of absence was legal, no matter how long absent; is that correct?

A. No, sir; there is no such presumption provided for in the law; the axiom that "no man is bound to be his own accuser," applies only to suits against criminals but never was intended to apply to applicants for appointments in the Church.

Q. Now suppose, Doctor, that on the return of such an applicant to his own Bishop, and his remaining within the diocese for six months before it was divided, and at the end of which period a new Bishop is installed, on his application to the Bishop of the newly created diocese, where would the presumption of the retention of good character be?

A. There never can be a presumption in the case. As a matter of jurisdiction the Bishop is empowered at any time, at given periods, according to his own good will, to institute an examination for the purpose of ascertaining whether or not the man still continues up to the standard of knowledge, and whether or not he still continues possessed of integrity of morals.

By the Court.—Q. I understood Father Nolan to testify in this way, that where a priest was a fully approved priest, after having served his probation for five years, the presumption continued that he was a fully approved priest until it was called in question and disproved?

By Mr. McKenna.—Q. Does that apply to a new Bishop and ordained priest found disengaged and out of office?

A. No, sir; the approbation under consideration is only that approbation which is provided for in theology, and is defined as: "The juridical judgment of the Ordinary as to the fitness of a priest to hear confessions." All our theologians agree in holding that approbation relates to one's qualifications to exercise the jurisdiction regarding the sacrament of penance. Moreover, according to the present discipline of the Church, approbation and jurisdiction are conferred and revoked together, and the word "approved" now,

by common usage, is applied only to those priests who possess jurisdiction.

By Mr. McKenna.—Is it presumed that the approbation is given by virtue of the diocesan statutes there?

A. No, sir; approbation never comes from law, it comes from a judicial action of the Bishop. No law can approve a man or confer on him jurisdiction to hear confessions. Such a thing is unknown in Church law. The only thing that can give a priest jurisdiction to hear confessions is an action on the part of the Bishop specifically approving and conferring jurisdiction.

By Mr. Moore.—As I understand you. Take this very case. This gentleman was absent several years from his diocese and returned while the same Bishop, whose Vicar-General had given him leave of absence, Bishop Domenec had still control of the diocese; he gives him no mission, and makes no appointment, and makes no provision for him. The Bishop is then removed by death or otherwise and Bishop Tuigg becomes Bishop of the diocese. What is the status of such a priest, and what right has Bishop Tuigg to say one thing or another to him when he makes an application to him. In other words, is he a *quasi* suspended priest, and must he give proof of his fitness?

A. He is not what we call in law suspended unless suspension has actually been inflicted by force of law or episcopal jurisdiction. He has not the right to demand the position of pastor from the Bishop. He has the right to tender his services provided he actually possess all the required qualifications. But the master may say go and he must go, and come and he must come. If the master does not see fit to entrust him with the parish that ends it as to his appointment to a parish, until, in an appeal, the superior's court would rule otherwise.

Q. I understand you to say, then, that all he can do is to request Bishop Tuigg to give him a mission. Now, could he demand of Bishop Tuigg to confer the power of hearing confessions on him and jurisdiction to celebrate mass?

A. He has a right to demand a mission and celebrate mass, provided he is not unworthy, and there is no statute against his doing so; because the general law of the Church gives to a priest a right to celebrate mass, until he is canonically deprived of that right. But

to celebrate mass and to exercise all the offices of a pastor are not one and the same thing.

Q. Just state the difference?

A. Why, the difference is that celebrating mass is a single act of religion that is not necessarily connected with any pastorage whatever. It is our highest form of prayer, our highest act of worship. But this highest right confers no jurisdiction to administer either the temporal or spiritual affairs of a parish. Where one is appointed a pastor, he is invested with that jurisdiction, which is required to administer the spiritualities and temporalities as connected with the office of pastor. In being a pastor one would be required to preach and teach the catechism, to administer the sacraments of baptism, and penance, and holy communion, and solemnize marriages (although he is not the minister of the sacrament of matrimony); likewise required to administer the sacrament of extreme unction. The two great duties of pastors are to preach and teach the catechism, and administer the sacraments in the spiritual order, and in the temporal order provide for the temporalities of the congregation, according to usage or local legislation.

Q. Well, in appointing him to a parish, as pastor, would he have been obliged, to enable him to perform the functions of a pastor, to confer this power of jurisdiction and approbation?

A. Certainly, sir, every pastor must possess these powers.

Q. The mission would be useless without them?

A. Quite useless, as far as feeding the flock is concerned.

Q. Now, then, I ask you whether Bishop Tuigg, for reasons known to himself and kept to himself, but if they were satisfactory to his own conscience and judgment, had a right to refuse to confer or to withhold these faculties?

A. An unquestionable right.

Q. Then his only remedy is an appeal to the Archbishop?

A. Yes, sir; his only remedy was by way of complaint or appeal. Dr. Smith has been presented here by the plaintiff as an authority. Dr. Smith, in his "Elements of Ecclesiastical Law," says, p. 199: "Is it allowed to appeal to the civil power or seek redress in the civil courts against wrongs inflicted by ecclesiastical superiors? Such appeals are, as a rule, not only unlawful, but null and void." * * * * "For the Church, being a perfect and supreme society, is necessarily the supreme, and,

therefore, sole and ultimate judge in matters pertaining to her jurisdiction; that is, in ecclesiastical and spiritual things. The civil power, so far from having any authority over the Church in this respect, is itself subject to her. Persons, therefore, who have reason to believe themselves in any way unjustly treated by their ecclesiastical superiors *can seek redress only in the Church herself*, viz.: by appealing to the proper ecclesiastical superior, and in the last resort to the Sovereign Pontiff," and the word "in" is emphasized. For authority he refers to Craisson, page 667, etc.

By Mr. Moore.—Now in that connection tell me if in canon law a priest so situated is entitled to support from the Church so long as he has no appointment?

A. Yes, sir, he is, but not in the same way that the pastor is entitled to support. The pastor is entitled to support by virtue of the *quasi* contract which he enters into when he takes charge of the parish. That contract obliges him to discharge the duties of a pastor, and obliges the congregation to support him. But whenever a priest is refused a parish because of being unworthy, he has no right whatever. I want to be definitely understood about this—no right whatever to demand the *compensation for labor* to which a pastor is entitled. I suppose a case in which he has not abandoned the office of a missionary—because the law says if he has abandoned the office of a missionary he loses his title; he is a Church monster, has no head. Yet when lawfully refused an appointment he has no right to ask or sue for the salary of a pastor. I suppose a case where he has not lost his title; he has been absent for legal cause, with legal authorization, and he has returned. It is known to the Bishop that he has lost the degree of science required for a pastor, or he has lost the purity of morals required to efficiently discharge the duties of a pastor, he cannot apply to that Bishop and say, "I have a right to be a pastor, and, therefore, I have a right to the support, the salary of a pastor;" he has no such right. But suppose the case of a priest, who through no fault of his own, has become incapacitated and needs support, then the Bishop is in one of two positions: As the administrator of the diocese he must administer not only all the spiritual affairs but likewise all temporal affairs entrusted to a Bishop. Amongst these temporalities, there may be entrusted to him certain moneys for the purpose of supporting disabled, deserving priests, or he may have no such funds. In case such funds be

in his hands, it is his duty to see that they are dispensed for the proper support of such priests. In case he has no such funds on hand, the question comes up, what is to be done for the maintenance of such priests? Has the Bishop power to legislate that the diocese shall furnish means for the support of a priest who, without any fault of his, has become incapacitated. The Bishop has authority to legislate and declare that the diocese shall furnish funds to support such priests. He has the power to enforce that legislation by spiritual penalties, *by spiritual means*, compel the diocese to furnish means for the support of those persons who have given their all to the diocese. I suppose a case of a priest who, without any fault of his own, is out of a position and unable to actively engage in the discharge of pastoral duties.

By the Court.—Is it the Bishop's duty to so legislate as to secure such funds?

A. It is his duty to do so in every case in which he can do so and in which there has not been made any other provision for the support of that priest. I suppose a case in point, if such funds be properly provided, *v. g.*, if the priests of the diocese establish a society for the purpose of securing funds, and such organization be able to furnish support to such priest, in my opinion, he has no right to ask the Bishop to legislate and thus provide for funds for his support. The old law of the Church forbids what we call *cumulatio beneficiorum*, or holding, at one and the same time, several ecclesiastical benefices, or several church livings. Now in keeping with this, if a man were already provided for by the organization referred to, the Bishop seems to be exempt from the above obligation.

By the Court.—I suppose, in brief, the Bishop is bound to do it, unless there is some other mode of doing it?

A. Yes, sir; the Bishop is bound, wherever it is possible, to provide such regulations as are required to secure such funds. But the Bishop is not bound to provide support for a priest who is disqualified through his own fault, at least no other than that which the State gives to its convicts in the Penitentiary, where they must observe discipline.

Q. What recommendation or obligation has the Council of Baltimore provided for the relief of such superannuated priests?

A. I have sufficiently explained that. The mistake made here is that provision is called *law*. It is not law. It is only a decree

that has not the force of law. It only recommends that some means be provided for the support of priests, who, without any fault of their own, have become disqualified.

By Mr. McKenna.—The discretion as to how that money is to be raised is entirely in the Bishop of the diocese? A. Yes, sir.

Q. Like the support of Seminaries and other institutions, is it not? A. Yes, sir.

Q. That is the only approach to law there is on the subject?

A. That is not an approach to law because it is only a recommendation. And there is no law, no statute law, in the country obliging the Bishop to do anything of the kind, even for worthy priests.

Q. It would be his duty to provide for worthy priests?

A. From the common law of the Church it would be his duty to compel *the diocese* to so provide. He could order a collection to be taken up in all the churches of his diocese able to contribute for the purpose of providing funds for the disabled priests. If the churches which are able refuse to do it, he could use spiritual means to compel them to furnish such support. But the Bishop cannot be required to furnish such support from his own realty or personalty; nor could he so use diocesan monies intended for other purposes. The principles of contracts and of administration forbid diverting funds from their proper purpose for which they were obtained or destined.

Cross-examination by Mr. Marshall.

Q. If I understand you right there is a distinction between an incoming Bishop as to the priests whom he finds in the diocese. Is there such a distinction?

A. A distinction between an incoming Bishop and whom?

Q. That he must examine these priests whom he finds in the diocese.

A. There is a distinction as to person of the previous Bishop and the incoming Bishop, but as to nothing—

Q. I am saying as to his duty to the priesthood. I suppose this case. Bishop Tuigg comes in here to-day; his predecessor was here yesterday; does he not stand precisely in the same relation to the priesthood as his predecessor did yesterday, without any exam-

ination or approbation? answer yes or no, and please remember that I am not deaf.

A. As to your personal remark, please learn that the laws of elocution provide for the use of sounds, not only so as to catch the ear of the hearer, but also to express ideas and passions.

Q. I want none of your impudence.

A. Defending the laws of elocution is not impudence, sir. Whatever attack you make, know that I am prepared to defend.

Q. Now you can give your explanation.

A. You speak of the Bishop coming in here without any examination or approbation?

Q. I said supposing Bishop Tuigg comes in here to-day, and his predecessor was here yesterday, does he not stand precisely in the same relation to the priesthood as his predecessor did yesterday, without any examination or approbation?

A. Does that examination and approbation refer to the Bishop or the priest?

Q. To the priesthood.

A. Priesthood is not a number of individuals. It is a state. Please, sir, construct your sentences grammatically.

Q. It just suits me exactly, please answer the question.

A. Well, he does. The Bishop succeeding his predecessor obtains the same rights and is subject to the same obligations regarding the subjects of approbation.

Q. Does he by virtue of coming in to-day become necessarily an examiner of each priest to see his status in the Church?

A. Yes, sir.

Q. And it is his duty immediately to make the examination?

A. Whenever he has sufficient reason to make such examination.

Q. Any personal reason? A. No, but a legal reason.

Q. Now, sir, when Bishop Tuigg succeeded Bishop Domenec here, if Father Sheehan stood in proper standing in the diocese, wasn't there duty of Support existing on Bishop Tuigg just as on Bishop Domenec?

A. Yes, sir. No more and no less. The duty of support does not exist "on a Bishop."

Q. And before that relation could be changed some charge or something must come to the knowledge of the Bishop to justify to interfere? A. What do you mean by something?

Q. Some sentence or charge.

A. Some judicial sentence ?

Q. Yes, sir.

A. No, sir ; if you understand " something " in that way I say no.

Q. The mere will of the Bishop is sufficient ?

A. I distinguish.

Q. You distinguish ?

A. Yes, sir ; a reasonable will, yes, sir.

Q. Who is to be the judge of the reasonableness of it ?

A. The Bishop.

Q. Then the priest has no judgment of the reasonableness of the act of the Bishop ?

A. I distinguish. He has no judgment as to the reasonableness of the act of the Bishop in the sense that he has power to resist or undo the action of the Bishop, yes. But in the sense that he has has power to appeal against the Bishop's ruling, against his will, he has full power.

Q. If the Bishop gives an order which is contrary to the law of the Church, to the common law of the Church, is the law to be obeyed or the Bishop ?

A. I distinguish. If the orders be contrary to what the priest erroneously understands to be the law of the Church, " the Bishop," if the order be contrary to what in reality, objectively is the law of the Church, the Bishop must not be obeyed.

Q. Well, who is to judge of that distinction ?

A. The individuals in the first instance, or in case of appeal the superior court.

Q. Then he never can disobey the Bishop ?

A. He can always disobey the Bishop.

Q. Lawfully ? A. Unlawfully, always.

Q. Unlawfully always ? A. All disobedience is unlawful.

Q. Then the measure of discretion is simply obedience ?

A. Obedience is not the measure of discretion.

Q. When has he the right to disobey the Bishop ? A. Never.

Q. Then if the Bishop would tell him to administer the sacrament after the order of the Presbyterian faith he would do it ?

A. No ; but refusing to do that would not be disobedience.

Q. That would not be disobedience ? A. No, sir.

Q. If the Bishop would tell him to contract matrimony would he do it? A. It would depend a good deal on himself.

Q. Ought he to do it?

A. Nobody has any right to exact by force of obedience any sin.

Q. Why should he not obey?

A. It would not be obedience; obedience is not in question; obedience presupposes legitimate authority.

Q. Who is to judge of the legitimacy of the command?

A. In matters certain, all judgment is correct; in matters doubtful, the subject must submit to the ruler, or, appeal, and abide by the decision of the court.

Q. Then if the Court of the Bishop tells him he must get married to-night he must do it?

A. Not at all; the Court is the Judge whenever there is a doubt about the morality of a command, whenever there is an outrageous abuse of authority to command, of course, he that runs, may read.

Q. Who is to judge of the outrageousness, the Bishop or the priest?

A. Well, both may judge of it.

Q. But who is to judge of it; the court must decide, the priest must not— A. Disobey.

Q. Never disobey? A. Never.

Q. That is true of all commands?

A. Of all lawful commands. Disobedience is never allowed. Because disobedience supposes there has been resistance to lawful authority—.

Q. No, no—.

A. Yes, sir. A lawful command, that is philosophy and theology too.

Q. Now sir, let me put this case to you. If the Bishop gives a command must the priests obey it?

A. I have answered you.

Q. Well, answer it now?

A. I answered by a distinction. If that command be contrary to what the priest erroneously considers the law of the Church, he must obey it. If it be contrary to what in reality is the law of the Church absconding from the subjective impression of the priest

regarding that law, he must not obey, and there is no question of obedience there.

Q. Well, how is a priest to ascertain which it is?

A. Through his knowledge, subjectively and objectively, correct.

Q. Then his mind is to decide it?

A. Yes, sir. If you mean by mind, judgment.

Q. Then it is his own knowledge after all, is it not?

A. Oh, yes. We know nothing but from our own knowledge.

Q. Suppose it is so plain that a child could read it, is not a priest to follow the letter of the law?

A. Yes; the letter of the law and the spirit of the law too. May it please the Court I would like to be questioned on a practical question. I protest against the Bishop in the Catholic Church being considered either a moral or intellectual monster.

Q. Suppose the command of the Bishop is directly contrary to the plain letter and spirit of the law of the Church, shall the priest decide not to obey?

A. Yes, sir; provided that, objectively and subjectively, it be in violation of law.

Q. You say that if the priest is absent from the diocese, if I understand the theory of your examination, that he must give an account of himself. Am I right, sir?

A. That depends upon what you understand by giving an account of himself.

Q. Well, you came up here from Cleveland; you were absent some time attending this trial; when you go home do you exercise your spiritual functions without going to the Bishop and giving an account of your doings?

A. Yes, sir; unless I lose my "good standing" here, for I was in good standing when I left the Forest City.

Q. Well, if you were six months on leave would you so do?

A. Well, sir, as a matter of courtesy, I would have manners enough to call upon the first gentleman in the diocese after my return. Moreover, it would be my duty to call on him and report myself for duty, if able.

Q. Before you exercise your functions?

A. That depends upon statutory law and the nature of my absence.

Q. Now, sir, if the man is on leave of absence does it matter whether he is one day or three days or three years away? Ain't the exercise of his functions perfect when he comes home?

A. That depends upon the law of the locality and the man's conduct while away.

Q. Is not that the law of the diocese, the law of Pennsylvania?

A. Well, for the present purpose I grant it is. I don't know but that he has a right to exercise those functions which are essentially connected with the priesthood. Please understand me.

Q. I understand you. Has he not, if he goes away with the express leave of his spiritual superior, and he comes home again according to that leave, in time; are not all his spiritual functions intact when he comes home as when he went?

A. What do you mean by his functions? As a priest or as a pastor?

Q. Priest or pastor, or whatever he was when he went away?

A. That depends upon whether or not he has lost during his absence what he had when he went away.

Q. I speak in this case. A man in the exercise of his spiritual functions gets leave of the Bishop to go away six months, a year, or two years, and he comes back according to his leave, are not all his functions as complete in him as when he left?

A. Yes, sir, and only so complete, and provided he has not lost anything during his absence. If he left as pastor, he continues pastor. If he left without being a pastor, he requires a new appointment after returning, before he can exercise all the functions of a pastor.

Q. Certainly a new congregation.

A. Not necessarily a new congregation, but a new appointment.

Q. The Bishop never dies, does he?

A. Oh, yes; it is decreed for all men once to die.

Q. The Bishop is the diocese, is he not? A. No, sir.

Q. He is not? A. No, sir.

Q. Isn't he the highest executive of the diocese?

A. Is the President of the United States, the United States?

Q. No, sir, I don't say—

A. Why, just as the President is the executive of the United States, so in the same way, the Bishop—

Q. Just in the same way?

A. In the same way as the executive power in the State is vested in the President, so the executive power in the Church is vested in the Bishop ; but besides possessing merely the executive power, the Bishop has the legislative and the judicial power for his diocese.

Q. Where is there any other power—my illustration was to show that because he was the executive he was, therefore, the diocese.

A. The diocese means an ecclesiastical organization, marked off by certain territorial limits, with certain spiritual powers, certain subjects, certain property. How can a part be the whole? Do you mean to tell me the cathedral is the diocese?

Q. No, sir, I don't.

A. Then how is the Bishop the diocese?

Q. If the Bishop is the legislative power, the judicial power, and the executive power, is he not the diocese?

A. No, sir. Are the civil, legislative, judiciary and executive powers here, the United States?

Q. What other power is there besides the judicial, executive and legislative?

A. There is the teaching power. But there is a great difference between an organization, and the powers of an organization vested in the ruler. If you don't know that, let me teach you.

Q. You will not teach me anything—I want you to tell me what other power there is beside the legislative, judicial and executive. Now teach me.

A. Will you let me teach you even that? Well, the teaching power. But there is a great difference between the actual powers required to rule a society, and the society itself; the power to establish and to conserve the society is only one of the elements of society which, besides, consists of all its members, its object and, in this case, temporal goods.

Q. Who are the members of this diocese?

A. All those who are baptized and reside within the diocesan limits.

Q. I suppose Father Sheehan is one?

A. All those who are baptized—

Q. Is Father Sheehan one?

A. You ask me who are the members of this diocese?

Q. Is he one?

A. All those who have a residence within the limits marked out by the authorities in the sense that they must subject themselves to the authority of the diocese.

Q. You think every one of that diocese is bound to obey the authority of the Bishop? A. No, sir, but I know it.

Q. Who is to judge of the limit of the authority, the Bishop or the subject? A. The Bishop, in matters doubtful.

Q. The Bishop is the judge in wherever the canons do not specifically limit. He is the judge?

A. Wherever he undertakes to apply his authority under the canons he is the judge the same as the President of the United States is the judge.

Q. Where is the relevancy of being the executive, as the President of the United States is the executive? Has the President a right to order a citizen here, and must he obey without judging?

A. I will show you the reason of my introducing this illustration. You seemed to think that because the Bishop is vested with the executive authority, therefore, he is the diocese. To get you to understand your mistake, I say the fact that the President is the only supreme executive of the United States does not prove that he is the United States. In the same way, the fact that the highest executive in the diocese is the Bishop, does not prove that the Bishop is the diocese; and here, sir, you are playing upon a word. What do you mean by the diocese?

Q. I am asking you—

A. Do you mean by the diocese that organization which is described under the law, or do you mean some wild vagary which I suppose some cunning lawyer in New York and Philadelphia might conceive and entertain in his mind as the diocese.

Q. I mean exactly what you define.

A. The wild vagaries of a Philadelphia lawyer?

Q. Oh, no; that is not a definition—no, I mean that all the organized power of the diocese is the Bishop, is it not?

A. No, sir.

Q. What other is there?

A. Why, there is an organized power in the Archbishop and the Pope.

Q. Is he in this diocese?

A. Yes, sir, by force of jurisdiction the Pope is just as much in this diocese as the Right Rev. John Tuigg.

Q. What other power is there resident in this diocese but the Bishop, who has the executive, judicial and legislative?

A. Why don't you add teaching power? Haven't learned that yet? What do you mean by residence—ecclesiastical residence required for jurisdiction, or that physical residence which applies to one's place of abode?

Q. The physical residence, the territorial?

A. I confess the only one in whom there is vested the ordinary jurisdiction of the diocese is the Bishop.

Q. He is a delegated power and is absolutely supreme?

A. He has not only the delegated power, but he has the ordinary power, which he gets by force of his appointment. The supreme power in the Church on earth is vested in the Pope, in Heaven, in Christ.

Q. Isn't that a delegated power?

A. No, sir, it is not. The mere ordinary delegation of powers in our law means the transferring to another one's own power, to which, by the order of things, the one delegated is not entitled. We mean by ordinary power that power which is conferred upon one by the very fact of his being in that office.

Q. Certainly; but is it not delegated for all that?

A. From whom?

Q. From the Pope, or from God?

A. No; it is not delegated from God, though it is given from God. I use delegated in its legal sense.

Q. In your Church the power comes down, down, down! In our Church it goes from the people up, up.

A. Can man give power to God?

Q. Who gave John Tuigg leave to be Bishop of Pittsburgh?

A. His lawful superior in the Church appointed him Bishop.

Q. Isn't that the Pope? A. Yes, sir.

Q. Didn't he bestow that power?

A. No, sir; not the ordinary power.

Q. Who bestowed it? A. God.

Q. Well, he didn't possess it before it was given him?

A. I distinguish. I grant that he didn't possess episcopal authority, in the sense that authority consists in Papal bulls, which

make known that he was chosen ; but I may hold in the light of the history of the Council of Trent that Bishops receive their jurisdiction immediately from God. It is certain that they receive their power of orders directly from God.

Q. Is not the jurisdiction bestowed by the Pope on the Bishop, and don't he define that jurisdiction ?

A. I distinguish. Ordinary jurisdiction is not bestowed by the Pope, according to the doctrine I have quoted, but delegated jurisdiction is bestowed. You need not go into the law on that. I can give you authorities and their various theories that *jurisdictionem* comes direct from God ; although we admit that the Bishop is likewise possessed of delegated jurisdiction, viz, he is permitted to exercise a part of the jurisdiction of his ecclesiastical superior at Rome.

Q. Is it not an innate jurisdiction ?

A. No, sir ; Bishops are not born ; they are appointed at the age of thirty.

Q. Then it is delegated, is it not ? A. No ; not at all.

Q. Suppose a man was absent from the diocese, in the case I put to Dr. Hecht this morning, in Virginia, sick, and in his mother's house for six months, and he would come home to his diocese, would he be required to produce any testimonials ; is there any law in the Church requiring him to produce any testimonials ?

A. Of his having been sick ?

Q. Yes, sir ? A. Oh, no.

Q. Does any presumption arise from a man's being absent with leave that he was a sinner while away and he ought to be degraded from his office ? A. There is no presumption in this case.

Q. Well, sir, doesn't the fact exist that he went away an approved priest and came home according to leave, that he has all the functions ? A. An approved pastor ?

Q. Yes, sir ?

A. No, sir ; there is a great difference between a pastor—

Q. An approved pastor ; is he not vested with all the functions ?

A. Yes ; unless he has lost them. We have laws ; you don't seem to understand that we have laws.

Q. Have you laws ? A. Yes, sir.

Q. If he went away with leave, and came home according to his leave at the time his leave expired, isn't he the same ?

A. No, sir ; not necessarily ; he may be excommunicated.

Q. I am asking you, there is no charge made against him, he goes away and comes back ?

A. Excommunication may be incurred without any charge ; but I understand the question is this : suppose a priest goes away vested with all the rights of the diocese, and without having lost any of the rights, does he possess them on his return.

Q. Yes, sir ? A. Why of course it is so.

Q. If he goes away and comes back without excommunication, without disgrace, without a charge, is there any presumption against him from the mere fact of absence ?

A. Presumption against him as to the exercise of his rights as a priest in the diocese, no ; but when you ask me is there any presumption as to the exercise of his rights as pastor, that question has been answered several times ; the pastor must show several qualifications.

Q. Explain the difference here ; if a man goes away with all the qualifications, are they not there when he comes back ; does the absence take them away ; change him ?

A. It may ; frequently it does. Does absence from one's books, logic, grammar, law, not frequently make one rusty ?

Q. Suppose this case : a priest is absent for two years, in regular standing, and he comes home within the allotted two years, is there any presumption against the exercise of all the functions ?

A. He went away as a pastor ? Is that your question ?

Q. That is my question.

A. Well, there can not be under any circumstances any presumption in the case as against the Bishop's right to examine as to the qualifications and to require positive proof.

Q. If he had them when he went away, what then ?

A. Suppose he fell away ?

Q. I am supposing that he went away with leave and behaved himself properly ?

A. Categorically, no, sir. After such an absence he is not necessarily possessed of all the qualifications.

Q. Suppose he behaved himself properly ?

A. Suppose he was attacked with insanity and lost all he knew ?

Q. Suppose he goes to Rome and officiates in the chapels there and comes home within two years, is he not entitled to all the functions he was entitled to when he went away ?

A. I have answered that a half a dozen times. If he is possessed of the qualifications let him prove it before he can expect an appointment.

Q. He must prove it? A. Yes, sir.

Q. Show us an authority for that?

A. Here is an authority, one that you have invoked as such—pages 152 and 153, Dr. Smith's Elements of Ecclesiastical Law

Q. Is Craisson an authority, sir?—Craisson's Manual of Canon Law? A. He is recognized as a respectable authority.

Q. Just as the other book you cited so frequently from?

A. Well, there is a great difference between certain authors.

Q. Well, they are only authorities?

A. I must say you are greatly mistaken in saying that they are all authorities of the same weight.

Q. There is nothing in them but a scientific interpretation of the law.

A. No, sir. They actually produce authoritative interpretation of the law.

Q. What constitutes canon law, Doctor?

The witness objected to the question, and appealed to the Court against squandering time. By direction of the Court he answered, saying:

A. Church law.

Q. Is all Church law canon law? A. Yes, sir.

Q. And so-called? A. Yes, sir.

Q. Are the decrees of this Plenary Council of Baltimore canon law?

A. I have answered that half a dozen times. I have told you that many of those decrees were not laws at all.

Q. Those that are laws, are they canon law?

A. Yes, sir. I have said they are.

Q. All over the world?

A. Well, all through the Church! I told you before that there comes from the courts of Rome only that which goes to the courts of Rome; the acts and decrees of the Second Plenary Council of Baltimore were sent to Rome as the decrees and regulations for this country and they were only so approved.

Q. Well, is the decree passed at Baltimore and sent to Rome canon law for this country?

A. Wherever there is a law in the decree, properly made and properly approved, it is canon law in the United States; wherever there is only advice or recommendation there is no law.

Q. I am asking you whether that is technically called canon law?

A. For the United States?

Q. For anywhere?

A. Oh, no; it is not canon law for Rome, or Africa, or any country outside of the United States.

Q. Reiffenstuel, is he anything more than a mere author or writer on canon law?

A. What do you mean by a mere writer or author on canon law?

Q. I mean he is a mere writer and expounder, is he not?

A. Yes, sir; he never was vested with universal legislative powers; he did not make laws, but he edited and scientifically interpreted them.

Q. He is authority so far as he gives good binding reasons for it?

A. I distinguish. He is a scientific author; yes, only that and nothing more—

Q. An expert authority? A. Oh, yes, sir, decidedly, sir.

Q. Not to the exclusion of other experts?

A. No, sir; but he agrees with all the others on all principles.

Q. With all the others? A. Yes, sir, on all principles. In Vol. I, p. 475, he teaches that positive proof of fitness is required to apply for appointments.

Q. Does he agree with the last authority I asked you about on all principles?

A. Yes, sir, and no cleric disagrees with any author on principles. Principles are as universal as the sunlight and of force everywhere.

Q. You say that he agrees in all questions on principles with Craisson?

A. Why, no; there is a wonderful distinction between a question about a principle and the principle itself.

Q. Well, all are agreed on principles?

A. Yes, sir, as far as I know, all real scholars accept all principles.

Q. Well, you limit that to "as far as I know" or as a fact?

A. I say there is no principle of law repudiated by any author. May I ask what you mean by a principle of law?

Q. You may ask me.

A. Will you answer it?

Q. Yes, I will, if you wait here until I make my speech, you can listen to it with pleasure. A. I doubt that.

Q. Is not that book as high an authority as any in the Church?

A. Oh, no, sir, I do not say that.

Q. Isn't he approved by the Roman authorities, Craisson?

A. I distinguish. There is *an* approbation given to that book. Oh, yes, viz.: His intention for writing a work on canon law, his devoting himself to that subject, &c., have been favorably noticed. De Angelis and Roncetti examined the work and approved of its publication, as was signified by a letter from the Secretary of the Congregation of the Index, etc., but the Holy Father has not committed himself to the position of declaring all the opinions of *Craisson* are principles obligatory everywhere.

Q. Wasn't this book, sir, approved by the Examiners of Rome?

A. It was approved as very worthy the attention of students of Church law.

Q. Well, what book has higher authority than that?

A. Why, for instance, the Bible.

Q. I am not speaking of the Bible; of authors, writers?

A. Were there no authors, writers of the Bible? Well, the Council of Trent.

Q. I was asking you of authors, not of the Council of Trent.

A. The Council of Trent is a great authority. St. Alphonsus is a much higher authority than Craisson—higher than Craisson ever will be. So is Reiffenstuel, Schmaltzgruber—

Q. Who else?

A. Well that is enough now.

Q. I am asking you have you any other?

A. Plenty, but I refuse to give them.

Q. Is there any other?

A. Certainly there is, and I am astonished at being questioned in an open court, before a Judge in the 19th century, as to whether any other writings have been approved by the Church. May it please the Court I must respectfully ask to be exempt from answering any such questions.

By the Court.—I think you may answer that question.

A. Well, all the great doctors and the Greek and Latin fathers have been approved of. Shall I enumerate them?

Q. That will do. That is all.

A. Is it possible? I thought you were going to make a fight for your poor client. You have been fighting me, and—

Re-direct Examination.

By Mr. McKenna.—A question occurred to me during your examination. I don't know whether it has been asked before or not. I was not here. The question I wish to ask you is this: Is there any obligation upon a priest who is absent even with leave for two, three, four, five or six years to report himself and his doings to his superior during that time?

A. The question has been answered at length. In brief I will say usually an absence is given in writing for two months, or, in given cases, for twelve months. At the expiration of the time granted for absence it is unlawful to remain away without a renewal of the leave of absence. One may be required to return and resume canonical residence under penalties such as suspension, excommunication or deprivation of benefice. The law says if any one who has charge of a benefice, or what we call now a church living, shall be absent three years without reclaiming his benefice, resuming his canonical residence, he thereby loses his living. As far as I know there is no statute law in the United States which regulates the time for which a priest may be absent. In granting leave of absence, however, Bishops in this country are bound by the old rules which regulate this matter and grant such absence only for sufficient established cause, in writing, and likewise state where the priest is going and what he is going to do. It has been stated here that a priest is not bound to celebrate mass more than three or four times a year. This is scarcely correct. He is not bound under penalty of mortal sin to say mass more than three or four times a year, but he is bound by ascetical principles to celebrate mass every day he can. We hold that Holy Mass is the greatest act of worship, and the most meritorious of all works, our highest form of prayer. This leave of absence is usually accompanied by a *celebret*, in which "the privilege of the altar" is asked. When one's leave of absence expires he is bound to report to the Bishop for duty. Where

he asks for an appointment he is required to give satisfactory evidence of his having the required qualifications.

Q. Did you hear what Father Nolan said yesterday about *suspension ex informata conscientia*? A. Yes, sir; I did.

Q. Now I wish you would state where you differ from them?

A. He stated that a perpetual *ex informata conscientia* suspension is not warranted by canon law, that it is "barbarous" to punish a man for the same offence "forever." Now the law says the contrary. Our highest authorities hold that this suspension may be perpetual. Here is an author called Bouix, who has published a great many works on canon law. This book is called his Treatise on Ecclesiastical Judgments. Vol. 2d, page 234, in proposition four, he says: "Suspensions *ex informata conscientia* are of force whether the Bishop inflict them for an indefinite time, or whether he expresses the time for which the suspension is inflicted, or whether the suspension is inflicted in perpetuity." His first proof is from the word *quomodolibet* of the Council of Trent. This word means "in whatsoever manner;" therefore he concludes this censure may be perpetually inflicted. He offers as further proof, the decision of the Congregation of the Council that was made July 14th, in the year 1352. This decision was as follows: "This Congregation of the Council is of the opinion that the suspension *ex informata conscientia* is of force in suspensions and prohibition, as well temporal as *perpetual*." I know the distinguished Dr. Stremmler claims that this decision has been superseded by a more recent decision given in 1857. Yet this doctrine about the perpetuity is found in Bouix, in a work published as late as the year 1866; and even Dr. Stremmler speaks of censures of this kind inflicted indefinitely, and lasting until the death of the Bishop who inflicted the censures.

Likewise I understood Father Nolan to claim that this censure can be inflicted only in two cases; first, to forbid the reception of orders, secondly to forbid the exercise of orders when there is sufficient proof of secret crime. This is scarcely in keeping with the teaching. The Council of Trent says this censure may be inflicted *etiam ob occultum crimen*—even or also for a secret crime. Dr. Stremmler teaches that this censure may be inflicted for secret crimes and "for crimes which, although *not* rigorously speaking secret, yet on account of special circumstances, cannot become matter for a formal trial." Stremmler, *Des Peines Ecclesiast.* p. 316. Now, when

I was upon the stand here in my direct testimony, it is true that I testified that the suspension *ex informata conscientia* may be inflicted, and I added, for six months; I added that six months in order to preclude the possibility of any just criticism, because all authors hold that this suspension may be inflicted for six months; I did not say, however, that there were no authorities that stated that it could not be inflicted any longer, or in perpetuity.

With regard to the statement that I held Dr. Smith's Elements of Ecclesiastical Law were forbidden under penalty of excommunication, I ask to say, I believe the reporter's notes will show I made no such statement. I did state something of the kind in connection with another work of Dr. Smith's, but the *Notes* and the *Elements* are two different works. With regard to the Notes I hold this: It is prohibited under the laws of the Index and, as you will find by all masters, violation of the laws of the Index is a crime which can be punished by excommunication.

I don't say that there is an excommunication *latiæ sententiæ* or even *ferendæ sententiæ* in question; but I do say repudiating the laws of the Index can be punished by excommunication.

Q. In reference to a matter connected with this, there was an allegation made here about a criticism that you had published on one of these works, as having been crushingly replied to by some other author. Do you know anything about that? I ask for information.

A. Yes, sir; I do; I read an answer to the *critique* that I published on the Elements of Ecclesiastical Law, and I think it was in relation to that the statement was made; it is true that a work entitled *Counterpoints of Canon Law* was published as a reply to some of my published opinions regarding certain questions, but it is likewise true that that work, the Counterpoints, has been reviewed at Rome and has not been sustained as a work, for it is true that several of the points under discussion were decided in Rome adverse to that work, and that decision is published in the last edition of Dr. Smith's Elements of Ecclesiastical Law. I may refer to the fact that in the last edition of his Elements Dr. Smith has accepted a number of my criticisms, by making the corrections I called upon him to make.

Q. Your criticisms on the original works were approved then?

A. In part they were sustained, and in part, I admit, they were not.

By Mr. Watterson.—Didn't the Holy See decide against you in your criticism in regard to this matter of the *ex informata conscientia*?

A. I think not. In the Roman document I have referred to as published, there is nothing contrary to what I held on that question.

By Mr. Moore.—Are suspensions *ex informata conscientia* and extra judicially the same?

A. Oh, no ; not at all. I will answer briefly. Suspension *ex informata conscientia* relates to the cases given but a few minutes ago ; an extra judicial sentence may relate to a thousand things other than the reception or exercise of orders.

Adjourned.

THURSDAY, May 5, 1881.

FATHER SHEEHAN, the plaintiff, recalled in his own behalf.

Examined by Mr. Watterson :

Q. Father Sheehan, I believe you were present when the Rev. Dr. Quigley testified with regard to the revocation of faculties. Do you agree with him ?

A. Not entirely. When faculties are given to a priest of course they can be recalled. So far Dr. Quigley and I agree ; but, if I understood him, the testimony that he tried to rebut—I am talking of faculties in the diocese of Pittsburgh, and within the range of their rights and duties in the United States, faculties given to a priest here on a mission are not things to be taken away at pleasure, and it is for this reason that these faculties are the necessary instruments of the laborer on the mission, and if they are withdrawn he is practically deprived of his office, and the common law rule that faculties can be given for reason or without reason, or revoked with reason or without reason, does not apply here, and this from the fact that is by common law submitted. A priest is interdicted practically in the exercise of his ministry when his faculties are withdrawn or revoked, because without these faculties he is incompetent as a missionary or rector, or as a missionary at all, as the custom, which is the best interpreter of law in every country, plainly shows ; and by claiming that the Bishop has the power to withdraw the faculties of a priest in any indirect manner, or directly, he claims to do what is forbidden by the Common Law of Baltimore. There-

fore, when the faculties once given to a priest, and when sent on a mission, they are absolutely the necessary instruments of the priest for labor on that mission, and they cannot be taken away from him without a trial, which is plainly provided for by the Council of Baltimore, and in this way: that every missionary priest in this country swearing to work, and swears that he will do what is within the range of every possible rational duty, he swears perpetual labor, in the specified form, and though it is true that under this general title of Mission a Bishop could in Africa, if a man was ordained, send a man into the brush to teach catechism, that is under this law of title of Mission, but it is understood by constant use and practice, which is the highest form of interpretation, a Bishop could not in this country do that, for the simple reason that depriving a man of his faculties renders him powerless. It would be equivalent to sending a man to dig without a spade, and a Bishop cannot deprive a man of his faculties, *i. e.* of his office, except by the observance of the necessary form of law. On this subject, the question of revocation, Dr. Smith says that the withdrawal of faculties is equivalent to a dismissal from the parish; and then he states on July 20, '78, the Sacred Congregation of the Propaganda issued an Instruction for this country which established the mode of procedure or form of trial to be observed by our Bishops in the examination of criminal ecclesiastical causes. The faculties are given him to enable him to be a laborer for the good of the people in that parish, and whatever construction may be placed upon it, in the books, regarding their withdrawal at the option of the Bishop, it has no reference to this country. But if a priest gets faculties from another diocese on the occasion of a visit there the Bishop can annul these faculties, they can recall them, they loan them for a specified time, they give and take away from any cause whatever; but here when a man swears that he will labor he swears also that he will labor with the necessary implements of labor, and in this country they are the Instruments, and when a priest swears he will perpetually labor it necessarily follows that he could not do so if the Bishop would withdraw the faculties at any time at his pleasure, that is if a priest would swear that he would work permanently how could he do so if the Bishop had a right to withdraw them at pleasure? I think the withdrawal of these faculties by a Bishop requires to be preceded by a trial, pre-

scribed by the law of Baltimore. I don't deny, understand me, in the abstract, the right to recall a mere faculty. In Europe they can be recalled without trial, and if they are given for a special purpose they can be recalled by the Bishop. But here, where they are necessary instruments of labor, they cannot be recalled or interdicted without trial, and therefore Dr. Quigley is wrong.

Q. I wish you would explain what is meant in the Catholic Church by criminal causes?

A. Well, cases where there are penalties attached or inflicted, are criminal causes as defined by the canon law; for instance, the question as to whether a certain party is legitimately married or not; that is for the civil process; or for instance, my neighboring clergyman trespasses on my domain, taking money from my parishioners, that case comes before the Ecclesiastical Court, it is a civil cause, it is merely the civil power in the Church. But whenever there is a penalty attached it is a criminal cause and you cannot punish a man and deprive him of his right of office, except it be a criminal cause.

By the Court.—Some witnesses divided them into criminal causes and disciplinary causes?

A. The distinction taken is here: In the last Instruction under disciplinary causes, they included both criminal and civil, but whenever there is a penalty inflicted it becomes of necessity, by canon law, according to all writers, a criminal cause, and I will give you, if you wish, a reference to an authority. Let me put this case: Suppose a Bishop refuses to give a priest work because he does not think he is qualified for the work indicated by a proper degree of science. That would not be a criminal cause.

By Mr. McKenna.—Wouldn't it be a disciplinary cause if he should require him to study a year or two before he would give him work? A. Oh, yes.

Q. Would the question of residence be?

A. Of residence? With regard to the law of residence, the only residence you are bound to is the diocese, and at present that does not bind in this case. I can leave the diocese to get my support and go among friends, and ask no one on account of a mission.

Q. You said you had authority for it?

A. I refer to Craisson, No. 6,301, and he is also referred to by Schmalzgruber: "By Ecclesiastical penalties proper are meant

chastisements of delinquencies or punishments enacted for the maintenance of the public discipline of the Church.” That is the definition given down here below: “Criminal causes, on the other hand, are those where crimes or delinquencies against the public discipline of the Church are punished. Where, therefore, an Ecclesiastical penalty proper is to be inflicted the cause is criminal, and here we may as well observe with Stremler, ‘that penalties and offences are correlatives. The former always supposed the latter. Otherwise the penalty were unjust and barbarous.’ Where, on the other hand, no such punishment is to be supposed, even though an offence or crime has been committed, or where, for instance, the validity of a marriage or the title to an office is disputed, the cause is civil and not criminal.”

By Mr. McKenna.—What page is that?

A. It is page 35. It is the pamphlet written against the treatise of Dr. Quigley.

Q. You say it is only from this pamphlet?

A. The definition, I believe, is taken from Craisson, and Craisson quotes, for the correctness of his definition, Schmalzgrueber. I give another definition here that includes also other canon law writers: “What is meant by criminal cause? [*Causa criminalibus.*]” Craisson teaches that as in secular so also in Ecclesiastical courts or judicial tribunals there are not only criminal but also civil processes or causes. Civil causes in the Ecclesiastical forum, according to the same author, are those where there is no question of inflicting penalties for offences, but merely of obtaining something else. Thus a process regarding the validity of a marriage, the jurisdiction of a prelate or the privilege of a monastery, is a civil cause or process.”

Counsel for plaintiff offer in evidence the book entitled “Counterpoints in Canon Law,” by Rev. S. B. Smith, D. D.

Objected to by counsel for defendant.

By the Court.—Objection overruled and evidence admitted for what it is worth. [Book handed to witness.]

Q. Please give the title of the book and the reference to which you desire to quote?

A. Manual of Canon Law, by Dr. Craisson, formerly Vicar General of the diocese of Valence; this work examined and approved by the Roman Examiners; vol. 4, No. 6039, chap. 5 and page 195.

Q. What is the title of the chapter?

A. On civil and ecclesiastical processes. That is, the ecclesiastical process in civil matters. "As in secular tribunals are held not only criminal processes but also civil ones, so also in the ecclesiastical. Now civil processes are those in which there is no question of punishment, the simple punishment of faults, but of something else—to obtain something else. For instance, if there be a question or litigation concerning the validity of any marriage or the jurisdiction of any prelate or the privileges of any monastery," etc.

Q. Does Craisson quote authority there? If he does, give it.

A. No, I don't see in this definition, after the words of the author, any authority quoted. I quote now No. 6,301, on page 288. The chapter is entitled, "Ecclesiastical Punishments." The translation is as follows: "By penalties concerning which we, the author, treated in the third part of this manual ought to be understood. The correction of offences, punishments, simply, and the ideas of vengeance is in the word *Vindicta*. It is pains or punishments introduced for the emendation of public discipline;" and then he quotes this, "Schmalzgruber in his Universal Law, title 37," this, according to reference, "Whenever there is a penalty there is criminal cause," and criminal causes of ecclesiastics in this country are to be punished by a common law trial according to the laws of Baltimore. The Bishop has *ex informata conscientia*, so much power for specific things, but that only touches order, it does not touch the parishes, if these were parishes here, it does not touch benefices, if they were here; it does not touch the rector even. It touches nothing at all but the mere order, &c. That power does not give him the authority to withdraw faculties as I explained. It touches the mere order only, and here I want to show that all these extra judicial points that the testimony for the defense went to show a right of appeal that these are not sprung from this power of Trent, *ex informata conscientia*. And here is an authority presented by the defense which I wish to refer to—

Q. State what that authority is first?

A. This is an Answer to Doubts, with regard to the manner to be observed by the Bishops of the United States of America, in taking cognizance of and deciding on criminal and disciplinary causes of clerics, an instruction sent here by Joan Cardinal Simeoni, Prefect of the Sacred Propagandi. Counsel for the plaintiff offer the

paper in evidence, referred to by the witness, which is marked, Exhibit No. 7, May 5th, 1881.

The Witness.—It is an answer to questions that are proposed, and what they were can only be gathered from the answer; and it says, by the Instruction of the 20th of July, 1878, "By the Instruction is not taken away from Bishops the extraordinary faculty of proceeding to suspension, *ex informata conscientia*, as they in the Lord shall judge to meet the very grave and criminal causes, or should think to promote some remedy and urgent necessity for the salvation of souls. Even without having heard this council of investigation the Fathers think there should be provided another remedy. Here is the only exception, according to my opinion, against the common law laid down in Baltimore, and here is the special instruction with regard to that law, and, therefore there are no other powers in this country under the laws of Baltimore and under the exception of the Council of Trent there is no other power of an extra judicial character in the hands of the Bishop here for punishment. This is the law exclusively with regard to this case.

By Mr. McKenna.—Have you given the whole translation?

A. All I want to quote. It is the one exception, therefore, of extra judicial sentences by which penalties are inflicted that are provided by the canon law previous to the Council of Baltimore, and I give my opinion as a canonist and a theologian, because it has not been debated elsewhere, that this excludes by force of law all extra judicial penalties to be inflicted without investigation.

By the Court.—That there is no extra judicial power in the Bishop except where it is *ex informata conscientia*?

A. Yes, sir; according to this instruction. The testimony was to show that extra judicial power and this *ex informata conscientia* was one and the same thing.

By Mr. Moore.—As I understand this, the Instruction dated July 20th, 1878, gave rise to some doubts, and that this was a solution of those doubts. Now we want to know what the Instruction of the 20th of July was; that is the authority, I think, you proposed to give?

A. Some questions were asked, and there were other questions besides this, because they had been started here in this country, such as: "Is this common law universal without any exception;"

"has this taken away the *ex informata conscientia*;" in other words, this one exception, and the Bishops have written to Rome to know whether it has taken it away, and I include, too, the martial law of Bishops, in the two cases, and the answer says, particularly, it has not taken away this one of the 14th Session of the Council of Trent, and because of the subject matter demanded of Rome, in the latter sentence where penalty could be attached, and where there is no mention of the Council of Trent, I give my opinion as a canonist, and hold as common law, that is the mere exception, viz., *ex informata conscientia*.

(Paper handed to witness.)

Q. Is that the instruction of the 20th of July, 1878?

A. Yes, sir.

Q. Translate the portion of it relative to this point?

A. "All of which proposed things the Sacred Congregation of the Propaganda, thoughtfully pondering on, resolve to prepare some remedy for their inconveniences, so that justice should be consulted for, to the end that neither innocent clergyman would be affected with any punishment through injustice, nor those guilty of any crime would escape with impunity from their deserved punishment, because of the less correct form of judgments which would obtain very easily if it would order all those things wisely prescribed by the sacred canons, for ecclesiastical judgments, especially in criminal causes, would be entirely observed in their commencements and endings, but thinking also in the aforesaid United States that this cannot be observed, the Sacred Congregation thought that it should be provided for in the manner or order that at least these investigations of a crime committed would be accurately performed, which investigations are deemed entirely necessary before a penalty is to be enforced." Here is a full explanation where all the judicial power of the Bishop with regard to the attaching of penalties is taken away by the Council of Baltimore: A penalty is to be attached after a hearing, whether it be a trial or not before the *judices causarum*. Of course, I don't consider that a trial at all. There is to be a hearing given where a penalty is to be attached, and this answer is that all judicial penalties to be inflicted on priests in the United States suppose a regular investigation as enacted by the Council of Baltimore, or rather by the new commission, save and excepting the faculty, by the Council of Trent, section 14th, called

ex informata conscientia, and therefore all appeals and *quaerimoni* are gone altogether. It is my opinion, and I think it well taken. It has never been written on by any writer.

Q. Father Sheehan, you heard the Doctor's testimony in regard to the *imprimatur*. I wish you would state if the *imprimatur* is binding in the United States?

A. With regard to Bibles, their annotations and exclamations, and with regard to prayer books and catechisms, and say class-books for seminaries and colleges the fathers of the Council of Baltimore mentioned as requiring the *imprimatur* and the Bible itself. The laws of the Index, according to Archbishop Kenricks, of Baltimore, who wrote on theology, and is considered one of the approved authors of the country, he, in his opinion says that the Index does not bind here. If I remember right, in the controversy between Archbishops Hughes and Breckenridge, an objection was made to the Rev. Father Hughes as to chaining down the intellect of the Catholic Church. This objection was made and it was immediately and promptly denied as having any application or existence in this country by Archbishop Hughes. Furthermore, there is no sane man would say that the laws of the Index bind in this country. Of course, when a law is made for the universal Church by an authority having the power to make that law I acknowledge it binds them, and when promulgated they are universal, but there are exceptions, not only by dispensation, I don't call that an exception, but the condition of countries may be such as it is impossible to apply them there, and as far as that country is concerned both in practice and theory ousters, like the civil law ousters, though the law is universal. The enforcement of the Index rules is utterly impossible in this country and have been utterly impossible for over a century in any country in Europe. I will quote what the fathers of Baltimore said, as is found on page 254, chap 3 of the acts and decrees of the Second Plenary Council of Baltimore, No. 502, and the heading of the chapter is as follows: "Books to be used." On prayer books, the translation is as follows: "Bishops ought to consult with each in their own diocese, should designate one or more priests skilled in the service of theology, who would subject books of prayer or otherwise pertaining to religion for approbation before they be commended by the Ordinary or the Vicar-General to the faithful, and it is their wish also that the practice of others than

those Ordinaries who publish works of this kind that they would not allow the prohibition of asking the *imprimatum* would go into abeyance.

Q. Does the Bishop carry this into practical effect?

A. It is utterly ignored with regard to all these things. What man would ever think of going and asking Bishop Tuigg for the *imprimatum* on mathematics. The thing is unheard of in this country. If the laws of the *imprimatum* were in force Bishop Tuigg would be bound to send down a man to Mr. Dodge's or Mr. Murphy's to see whether or not they were dealing in books which had not the *imprimatum*. The law is out of order altogether, and never had any existence here. It is blotted out of Europe even so far as the sentence of excommunication is concerned. Dr. Quigley furthermore said that a person who read this book, Notes of the Second Plenary Council, without consent of his Bishop would incur the sentence of excommunication. He denied that yesterday, but he says now that the Bishop has the power of excommunicating that person who would read the Notes on the Second Plenary Council of Baltimore. The idea is absurd. If it is not so Bishop Tuigg has as much power in this case as a Mormon Bishop. It is nonsense.

Q. Father Sheehan, I hand you a book entitled "Elements of Ecclesiastical Law," and call your attention to page 20, Roman numbers. Please read from there?

A. "The fifth criticism from the same critic has reference to the force of the decrees of the Index, whose binding force in the United States is questioned by the author. On this head the criticism has a foundation and the author deviates somewhat from the Roman teaching."

Q. This report you have read here. Isn't that a solution of the doubt?

A. The report from Rome is simply that it deviates from the Roman teachings, that is, the absolute law.

Q. Who deviates from the Roman teachings?

A. Dr. Smith, that is in fact, there is a universal law. But where there is a universal exemption by custom and everything else, the law is abrogated in practice. The Council of Trent requires that a person shall go before a proper parish priest to get married, and to have any one else it is null and void. Now it is a well known fact that there are great portions of this country to which this law

is not applied. Still I have to acknowledge, in the same sense that Dr. Smith's work with Catholic Theologians, that like the decrees of the Council of Trent providing for the marriage of persons before a proper canonical parish priest, which does not bind, with the exception of a few specified places in this country, in the same way I acknowledge that the force of universal law made by an authority to make universal law has force everywhere, but the impossibility here or the connivance and exceptions and sanctions of Bishops utterly ridicules the idea of putting in force the expurgatorial Index by which you cannot read a paper on Sunday or Monday. If such were the case you would have an inquisition established here and we could not live at all.

Cross examination by Mr. Moore.

Q. You say it is not in partial force ?

A. Not at all, not at all.

Q. That is your opinion ?

A. I doubt if Bishop Tuigg ever had an application for the *imprimatur* on a book from any person, and if he was applied to for it, it was simply to get the Bishop's name so as to sell better.

By Mr. McKenna.—Q. You stated here about your oath of service requiring you to serve in your office, and that it required you to keep qualified for service ?

A. Certainly. If you mean by that—by qualification—that the priest and Bishop is to make a pretense of being a saint, that is perfectly false ; such parties are generally hypocrites, and bad ones, too.

Q. Then it is immaterial whether they keep perfect or not ; must you keep qualified under your oath of office ?

A. Yes, sir ; I am bound to keep myself qualified for office.

Q. Who is to judge of this ?

A. Approved priests are supposed to be qualified until they are disproved by the manner and authority laid down for that by the Catholic Church in this country. Till then they are supposed to be innocent men.

Q. Father Sheehan, I understood you to make the broad assertion here, or do I understand you to announce the doctrine about general usage ever abrogating positive enactments of the Church canon law ?

A. General usage? Oh, unquestionably. The usual interpretation is given down by all canonists as having the same force as the law itself.

Q. Does that repeal the law itself?

A. It practically works the repeal of the law itself, unquestionably.

Q. Where did you find any authority for that?

A. There are four modes of interpretation of law. The first interpretation is that given by the law-giver himself, and that is the Pope or any absolute monarch or king. The Pope, if he excepts a country from the provisions of a law, the presumption is that it is excepted. Now the usual interpretation, that which is established by lawful custom, gives that the same force and authority, according to Dr Smith's Elements; in support of which he quotes authorities down here. This usual interpretation ranks with the same force and authority as that of the law-giver himself, that is, the Pope. It is not custom, but fact.

Q. I am speaking about custom and usage.

A. Custom and usage? I cannot make a distinction. If it is known to the Pope that a general use or custom by priests and Bishops in the Church, for the proper length of time, has been received as a general interpretation of the law it is equivalent to the interpretation of the lawgiver himself, and any exception that is proved in that manner has abrogated that law the same as if the Pope had said, 'I don't wish America to be included.'

Q. Father Sheehan, you gave a very elaborate distinction, as I understand it, here this morning, about the Council of Baltimore, wherein they provided for trials in criminal causes; and I wanted to know from you if the Instruction of 1878 abrogates and supercedes all other modes?

Q. No, sir; it does not. It states, particularly, the Instruction does, in processes it supercedes, but it states specially that the old common law of course remains intact, but that process is by practice found out to be so inconvenient that we are bothered here in Rome from priests complaining of the matter, that there is no justice even under the process and provision of the common law, and they make a fuller process. The common law remains intact.

Q. How were the "Doubts" that you offered in evidence there prepared and sent to Rome for an interpretation, for an instruction, in

reference to criminal causes. Didn't they originate in this way: Hadn't the Bishops some doubts after that Instruction had been issued whether they had any power to suspend at all by reason of private knowledge without a trial, and didn't they ask the people in Rome to give an Instruction to them that would justify them in emergencies to exercise summary power in criminal causes?

A. I have never seen the letters of the Bishop that went to Rome.

Q. You have undertaken to give an interpretation of that, and I want to know how the "Doubts" originated?

A. These "Doubts" might have originated with priests as well as Bishops.

Q. I merely asked you about the "Doubts?"

A. If I were to give an opinion I would say that very likely Bishops and priests stated the case on both sides to Rome and that this is the answer. I am under the impression that the complaints already against the Bishops in Rome on account of the exercise of this power, had accumulated to such a degree that Rome is endeavoring in every shape and form to curb their authority, or rather usurped authority, for suspension from office on the right hand and the left.

Q. Then I understand you to say that it curtails their power?

A. It curtails it, how?

Q. You have stated that the court of trial provided before that is no trial. You said that incidentally?

A. The other is a trial, you may call it judicial or private, but here an investigation is required from the Bishop in the very manner prescribed before they can inflict an ecclesiastical punishment, that is in the Instruction, and there is besides the common law of Baltimore, and the Bishop cannot do it any other way. They cannot, a barbarous power.

By Mr. Moore.—I ask you whether this is a correct translation of the passage in Craisson, referred to by you, No. 6,301: "By penalties concerning which there is treatment in the third part of the manual, ought to be understood either, faults, or vindications, instituted for the emendation of public discipline?"

A. The word "vindication" is not properly understood or translated by you.

Q. No question except to that one word?

A. Yes, sir. That word is not correct there when they translate.

Q. What does it mean? If you take it out of the text I will say you are right, but when you take it there it means crime not mere offense. See if this is a correct translation of paragraph No. 6,039: "As in the secular forum they have not only a criminal process, but also civil, so in the ecclesiastical forum a civil process in which there is no discussion or consideration about the public vindication or any." You translate it crime, but concerning the obtaining of something else which is being sued for, simply, the question is moved concerning the validity of some marriage, concerning the jurisdiction of some prelate, concerning the privileges of a monastery, &c. Did you translate the rest of that Father Sheehan? A. No, sir.

Q. Is that a correct translation of the first part?

A. No, sir; where you give again, and this word where there is a question?

Q. In the text it means the particular question at issue before us—a mere general issue?

A. The thing before the Court to be acted upon.

Counsel for plaintiff objects to the foregoing questions in reference to the translation.

Q. Please translate the rest of that?

A. "On account of the connection of the subject matter, viz: the intermingling of the civil and criminal causes of both courts—the contentions of both"—for the purpose of translation—"what remains to be said," in the same connection, of course, "we divide into two articles. In the first we will speak of, the ordinary process in civil matters, and in the second, the form—we will describe the form, the proper, peculiar manner of the cause;" that is all. Are you satisfied with the translation?

Q. Yes, sir; I am that. Then, Father Sheehan, isn't it a fact that there are several processes in the Church which, almost of necessity, involve the criminal process and penalties?

A. If you mean to ask me a question as to the whole range of jurisdiction of the Civil Courts, of the ecclesiastical law and the criminal, and where one jurisdiction ends, and where the other commences, I am not prepared just now to give an answer to that question, because that question covers the whole range of law, or covers

the whole case. There are in these Courts a mixed case, for instance a criminal cause can grow out of a civil cause, and if my neighboring priest takes from me, against the law of the Church, out of the statutory money, or something belonging to the emoluments, I can sue him as a civil right before the Episcopal Court where it is, and if the judgment be finished with all the proper forms, &c., &c.; of course there are forms in the Episcopal Court of of necessity sanctioned for the examination of these rulings; it is not temporal investigation, therefore there are none existing; it is in this country spiritual only. The Bishop, if he is an honest man, would compel the priest to pay over the money to the other man, and if he didn't do it, then there would be a criminal process in the Church against the priest for not paying his debts.

By Mr. McKenna.—You stated here yesterday about the time time you left Rome, and about the time you applied for a mission to the Bishop, are you familiar with the rules of the Propaganda in relation to priests returning to their Bishop? What is the regulation on that subject?

A. I never heard of any regulation of any kind at all.

Q. Then a priest visiting Rome on a grievance or any business that the Propaganda takes cognizance of can return to his country and take his own time for reporting to his Bishop?

A. Within reasonable bounds; the Propaganda has nothing to do with it at all.

Q. Don't the Propaganda command a priest to go direct to his mission? A. Sometimes they do, and sometimes they don't.

Q. Have they the power or authority to do it?

A. Do you mean to say that if I order you to go home under pain of suspension within two days?

Q. When you went there and interviewed the Cardinal about your business and left Rome by their directions, what was your direction, to return to your Bishop and report there or take your time about it?

A. There was no statement made whether I was to report or not.

Q. Was it the supposition that you were to report to your ecclesiastical superior? A. Yes, sir.

Q. Were you ordered to go away?

A. I insisted upon going home again and again.

Q. You say you were not ordered to return to your mission or diocese?

A. Of course I was to come home, if you mean by "order" that I was sent home.

Q. Was it reporting to your Bishop to arrive in the city of Pittsburgh, at the Union Depot, and walk past the Episcopal residence, on Grant street, carpetsack in hand, take the train and go to Noblestown and stay at Father Canovin's, or go to Baltimore and Virginia?

A. The question of time was never mentioned by the Propaganda one way or the other, whether I was to come the following year or whether I staid away ten years. There was nothing stated of the kind.

Q. Father Sheehan, what is the usual time required to come from Rome to Pittsburgh?

A. Well, I suppose a priest ought to take in fair, square traveling, but not jumping over, about five weeks or six, for a man when he is traveling to Europe for the first time is not going to hurry.

Q. Father Sheehan, was it in compliance with directions from Rome to return to your mission to come by the way of Baltimore and Virginia? A. I didn't specify the route at all—

Q. If you wanted a reasonable time to return from Rome how long would it be, five or six weeks?

A. About five or six weeks. I concluded to see my mother in Virginia when I came to this country.

Q. How long did you stay there?

A. I stopped there the whole winter until after Easter.

Q. Did you regard that a compliance with the commands of the Propaganda to return to your mission?

A. It was entirely at my option to report. It was not alluded to either yes or no.

Q. Are you not sueing for salary for a portion of that time? And don't you swear in your affidavit that your offer was continuous, and you were ready and willing to render service?

A. Yes, sir. Bishop Tuigg has the right to recall me from any portion of the country.

Q. Were you in the service of the diocese down in Virginia?

A. If you mean whether I was serving in the Pittsburgh dio-

cese, no ; and if you mean that my right was to serve, it was, and when I am refused I could go where I pleased.

Q. Suppose the Bishop had reconsidered his determination, and some Monday morning, wanted to appoint you to a mission, where would he have found you? A. Where?

Q. Yes, sir—on short notice?

A. The utter injustice of supposing a priest had a duty to remain on him after the Bishop refuses to give him justice.

Q. You had no letters?

A. When I go outside of the Pittsburgh diocese I can go without his sanction.

Q. Where could he find you outside of the diocese?

A. It makes no difference. I am at perfect liberty to go outside of the diocese, and he has no more control over me than any one here.

Q. You admit being a subject of the Bishop's when you came into his diocese, and do you say it was none of his business where you were? A. I was outside of the diocese.

Q. Don't the jurisdiction follow you wherever you go?

A. No, sir ; unless on the call of the Bishop. If Bishop Tuigg recalls me outside of the diocese of Pittsburgh I am bound to obey, and he could compel me by censure to come if I failed to do so.

Q. Suppose he couldn't find you—you didn't give him your address?

A. Bishop Tuigg has tracked me like a sleuth hound. He told me he knew everything about me, where I went and where I stayed, what I ate and what I drank. He knew very well where I was. He said he knew better than I did myself.

Q. He told you that? A. Yes, sir.

Q. Where? A. Up in Latrobe, at the Sisters Academy.

Q. When?

A. After I returned from Rome. He said he knew my going and coming, and seemed to know my history better than I knew it myself.

Q. Was it not part of his duty? A. Yes, just as a Bishop.

Q. What I mean is this : Outside of the diocese he still has jurisdiction? A. No, sir.

Q. Are you not still under his jurisdiction? A. Yes, sir.

Q. Is it not part of the Bishop's duty to keep himself informed in regard to his priests? A. It is part of his business.

Q. When you furnished no credentials after your absence—

A. This thing has been decided over and over again. Here, by your authority, when I am an approved priest, my qualifications remain until called in question.

Q. I am only speaking of your credentials, about the presentation of your credentials from your foreign tour, from the Propaganda?

A. I never asked for a credential from any man living except Father Hickey, never. I will state here, if a priest leaves the Pittsburgh diocese here, if he has the qualifications he has them when he comes back, and he has them as long as he leads the life of a priest, the Bishop has no jurisdiction over me outside of the diocese. There are priests in the country who never go near the Bishop at all. I have heard it stated here that the priest, when he comes back, has to give the Bishop a letter. I never knew that. I went away and I stated that the Vicar-General in Rome asked for a letter. I showed to the Propaganda my letter while at Rome, and I officiated there in the functions of the Church. When my leave of absence was out I returned, asked the Vicar-General, who was then Father Hickey, for a mission, and he said he would arrange it for me. He never asked as to my qualifications, and I never bothered my head about it. The first of last year was nearly a quarter of a century since I entered the priesthood and never was asked to produce credentials, going or coming. And you asked permission to say mass; if the priest knows you, it is all right; if he does not, all right, you cannot get to say mass. I have seen myself the Very Rev. James O'Connor, now Bishop himself, kneeling down the same as a layman, and I officiating, simply on account of an impertinent statute.

By the Court.—Did the Bishop ever ask you at any time for certificates in reference to your absence or your qualifications?

A. Never, never, never.

Q. Did he ever complain to you about your being absent and give that as a reason for not doing anything? A. Never.

Q. When you came back from Rome did you see him personally?

A. Yes, sir.

Q. Did he complain or find any fault with your wrong doing?

A. No, sir, not at all. "I don't consider you a priest of this diocese any longer."

Q. Did he ask you if you had any recommendatory documents, or anything of that nature, from Rome?

A. I asked him what he would do for me and then he said, "I don't consider you a priest of this diocese any longer." In other words, he practically meant to say, I give you no mission, I know the jurisdiction, I know the trouble, I know your position, the practical remedy is out of your power and even if I am wrong Rome will sustain the Bishop in his action.

By Mr. Moore.—Q. You have answered, to his honor, that Bishop Tuigg made no complaint to you. Did he ask you nothing about your past record? A. He did not.

Q. Didn't Bishop Tuigg not only say to you what was the ground of his refusal, but show you authenticated documents containing exact and specific information, and didn't he tell you that he had them, showing that you had been ordered into a retreat in Rome for drunkenness? A. No, sir.

Q. That you had been in prison for the same offence in several cities of this Union? A. No, sir.

Q. Little Rock, Arkansas, being one? A. No, sir.

Q. And amongst others, the City of Pittsburgh, within this Diocese? A. No, sir.

Q. You say he didn't show or give you that information in any way, by word, or letter, or document? A. No, sir.

Q. You have stated that the Bishop followed you like a sleuth-hound, knowing more about you than you knew yourself, and didn't he tell you and don't you know that he knew where you had been and what you had done and what happened to you in those improper place, didn't the Bishop tell you?

A. The whole amount of the information told me was this: He says, I know he mentioned that part, I know how you made a retreat in Baltimore, I know how you went to Rome, how you came back, and I don't consider you a priest of my diocese any longer. This is all the information you can get, in the two interviews I have had since he has been Bishop.

Q. He told you he knew how you had made the retreat in Baltimore—he said that he knew how you had made the retreat in Baltimore? Did he say that?

A. Hedid, sir. I wrote to the Bishop from Carrollton a few weeks before this interview when I came within the diocese, and I told him I was here under the instructions and at the expense of the Propaganda, and the letter was to forgive and forget. Now Bishop, I said, I will do anything you ask in order to have a reconciliation, and as a man to get my strength, supernatural strength, to bear up for this, that I had made a "retreat" in Baltimore, and he alluded to this when I met him.

By the Court.—Q. You say you had written to him previously?

A. Yes, sir; and before I went to him I made a "retreat" for eight days to give me strength.

Q. Please state what you wrote.

A. I told him that I knew, or presumed from letters from Rome, that he knew that I was here under the instructions and at the expense of the Propaganda, and that I was willing now to do anything, to make no conditions, or anything else, and that I was willing, of course, to do everything, to obey, and everything that was proper to get on the mission, and as an evidence of that I had made a "retreat" for the purpose of enabling me, what we Catholics call supernaturally, for doing matters commanded by the Bishop. He got that letter and told me he had received it at the interview a few days previous.

By Mr. McKenna.—How long was that before you presented yourself? A. It might have been a week or ten days.

Q. What did Bishop Tuigg say?

A. He told me, sir, I received that letter.

Q. Is that all he said?

A. I believe he mentioned one thing more. He mentioned that he knew I had made a retreat in Baltimore and he said, "I don't consider you a priest of my diocese any longer," and I asked him what about my temporal affairs, and he told me, "you know the country as well as I do."

Q. This was after your return from Rome?

A. Yes, sir; that is what I am speaking. In August, '76, he said, "you were away for six years." I said I had written to him that I was sick, and then he told me that I didn't belong to his diocese, and the Council of Baltimore said so, and I told him the Council of Baltimore didn't say so.

Q. I understood you to state a while ago that Bishop Domenec stated these things before you left for Rome? A. It is false.

Q. You did state yesterday that Father Hickey stated that there were men on the Bishop's council, among others the present Bishop, on Bishop Domenec's council that would not be in favor of putting you in office?

A. I didn't substantially or any other way.

Q. Did you testify to having a misunderstanding with Bishop Domenec? A. No, sir.

Q. And his apology afterwards?

A. No, sir; I said that the personal relations for a short time between Bishop Domenec and me were interrupted, and afterwards he stated that he was sorry and wanted me to write a petition and to place it before him, and he "would place it before his own council in Allegheny diocese," and he told me "if they would sustain me and stand at my back I can take you in"

Q. Take you in?

A. Yes, sir. I can't give you employment because my hands are tied. I am afraid of Bishop Tuigg. They want my mitre.

Q. As a matter of canon law, if you did not belong to Allegheny diocese, but belonged to the Pittsburgh diocese, could Bishop Domenec have received you without the acquiescence of Bishop Tuigg?

A. When a person is abandoned by his own Bishop there is no canon law. And he said, I don't take you in as an Allegheny priest, you don't belong to Allegheny, this is a courtesy because I want to do everything for the priests of the old diocese. I can't affiliate you, I can't affiliate you.

Q. Did he by courtesy violate the canon law in your case?

A. No, sir, he didn't.

Q. When was your misunderstanding with Bishop Domenec?

A. I never had a personal difficulty; it was only a misunderstanding between—

Q. When was the reconciliation?

A. No, sir; there was never anything formal between us, only I was under the impression, whether true or not, of an inimicable character to me, which I attributed to some intrigues of some priests, and I believe he was convinced of it.

Q. When was he so convinced?

A. When he was Bishop of Allegheny he was so convinced, and gave me my faculties, and was going to give me a mission in the diocese as a foreign priest. However, that was the best evidence of his character, because he didn't want to see any priest degraded.

Q. Your trouble with Bishop Tuigg originated long before this *Instructio* of 1878; your suit here is for services from March 19th, 1876? A. That is correct.

REV. FRANK P. WARD, sworn.

Q. You understand Latin, I presume? A. Yes, sir.

Q. You can state if this *Instructio* from Rome, in Latin, has been translated by you, and if the copy is a faithful and correct translation of the document?

A. Yes, sir; I translated it, and as far as I know it is correct.

Q. Well, there is in addition to that the interpretation or answer to Doubts raised on that document? A. Yes, sir.

Q. A second document attached? A. Yes, sir.

Q. You can state if you translated that from Latin into English, and is that a fair translation?

A. Yes, sir; that is a translation, and as far as I know it is correct, being supplementary to the first.

Counsel for defendant offers the papers referred to in evidence.

Admitted and marked Exhibit No. 8, May 5th, 1881. [See Exhibits in Appendix.]

Adjourned. Testimony closed on both sides with right to offer, before argument, verified translations of authorities on canon law, etc., referred to in evidence, and at suggestion of Court, briefs, arguments and notes of testimony requested to be printed for submission to Court on argument of the case.

REPORTER'S CERTIFICATE.

Having carefully compared the foregoing printed testimony with my notes at the trial, I hereby certify that they are substantially correct.

W. A. SCHMIDT, *Stenographer*.

EXHIBITS.

INSTRUCTIO

S. CONGREGATIONIS DE PROPAGANDA FIDE

De modo servando ab Episcopis Foederatorum Septentrionalis Americae Statuum in cognoscendis et definiendis causis criminalibus et disciplinariis Clericorum.

Quamvis Concilium plenum Baltimorese II ab Apostolica Sede cognitum, certam quamdam iudicii formam, iam antea a concilio provinciali S. Ludovici sancitam, in criminalibus clericorum causis ab ecclesiasticis curiis dioecesium Foederatorum septentrionalis Americae Statuum pertractandis servandam esse decreverit, experientia tamen compertum est, statutum iudicii ordinem haud undequaque parem esse ad querelas eorum praecavendas, quos poena aliqua mulctari contigerit. Saepe enim postremis hisce temporibus accidit, ut presbyteri iudiciis ea ratione initis latisque sententiis damnati, remoti praesertim ab officio rectoris missionarii, huc illuc de suis Praelatis conquesti fuerint et frequenter etiam ad Apostolicam Sedem recursus detulerint. Dolendum autem est, non raro evinire, ut in transmissis actis plura, eaque necessaria, desiderentur atque perpensis omnibus, gravia saepe dubia oriantur circa fidem documentis hisce in causis allatis habendam vel denegandam.

Quae omnia S. Congregatio fidei propagandae praeposita serio perpendens, aliquod remedium hisce incommodis parandum, ac ita iustitiae consulendum esse censuit, ut neque insontes clerici per iniuriam poena afficiantur, neque alicuius criminis rei ob minus rectam iudiciorum formam a promerita poena immunes evadant. Quod quidem facili pacto obtineret, si omnes praescriptiones a sacris canonibus sapienter editas pro ecclesiasticis iudiciis, praesertim criminalibus, ineundis et absolvendis servandas omnino esse praeciperet. Verum animo reputans, in praedictis Foederatorum Ordinum regionibus id facile servari non posse, ea ratione providendum esse duxit, ut saltem illae de admissio crimine accurate peragantur investigationes, quae omnino necessariae existimantur, antequam ad poenam irrogandam deveniatur.

Itaque SSmo Domino Nostro Divina Providentia P. Leone XIII approbante, in generalibus comitiis habitis die 25 Iunii 1878 S. C. decrevit, ac districte mandavit, ut singuli memoratae regionis sacrorum Antistites,

in Diocesana Synodo quamprimum convocanda quinque, aut ubi ob peculiariora rerum adiuncta tot haberi nequeant, tres saltem presbyteros ex probatissimis et quantum fieri poterit in iure canonico peritis seligant, quibus consilium quoddam iudiciale, seu, ut appellant, Commissio investigationis constituatur, eidemque unum ex electis praeficiant. Quod si ob aliquam gravem causam Synodus diocesana statim haberi nequeat, quinque vel tres prouti supra per Episcopum interim ecclesiastici viri ad munus de quo agitur deputentur.

Commissionis ita constitutae princeps erit officium criminales atque disciplinares presbyterorum aliorumque clericorum causas, iuxta normam mox proponendam, ad examen revocare, rite cognoscere ac ita Episcopo in ipsis definiendis auxilium praebere. Satagant propterea oportet ad hoc munus electi, ut accuratae fiant investigationes, ea proferantur testimonia atque a praesumpto reo omnia exquirantur, quae ad veritatem eruendam necessaria censentur ac ad iustam sententiam tuto prudenterque faciendam certa vel satis firma argumenta suppeditent.

Quod si de alicuius Rectoris missionis remotione agatur, nequeat ipse a credito sibi munere deici, nisi tribus saltem praedictae commissionis membris per Episcopum ad causam cognoscendam adhibitis, eorumque consilio audito.

Electi Consiliarii in suscepto munere permanebunt ad proximam usque Diocesanæ Synodi celebrationem, in qua vel ipsi confirmentur in officio vel alii designentur. Quod si intermin morte, aut renuntiatione vel alia causa praescriptus Consiliarium numerus minuat, Episcopus extra Synodum alios in deficientium locum, prout superius statutum est, sufficiat.

In causis cognoscendis, iis praesertim in quibus de rectore missionario definitive a suo officio amovendo agatur, indicialis commissio hanc sequetur agendi rationem.

1. Ad commissionem investigationis non recurratur nisi prius clare et praecise exposito ab Episcopo causa ad deiectionem finalem movente, ipse rector missionarius malit rem ad Consilium deferri, quam se a munere et officio sponte demittere.

2. Re ad Consilium delata, Episcopus vicario suo generali vel alii sacerdoti ad hoc ab ipso deputato committat, ut relationem causae in scriptis conficiat, cum expositione investigationis eo usque peractae, et circumstantiarum, qua causam vel eiusdem demonstrationem specialiter afficiant.

3. Locum, diem, et horam opportunam ad conveniendum indicet, idque per litteras ad singulos consiliarios.

4. Per litteras etiam Rectorem missionarium, de quo agitur, ad locum et diem constitutum ad Consilium habendum advocet, exponens, nisi prudentia vetat uti in casu criminis occulti, causam ad deiectionem moventem,

per extensum, monensque ipsum rectorem, ut responsum suis rationibus suffultum ad ea praeparet in scriptis, qua in causae expositione vel iam antea oretenus, vel tunc in scriptis relata fuerint.

5. Convenientibus consiliariis tempore et loco praefinitis, praecipiat Episcopus silentium servandum de iis, qua in Consilio audiautur; moneat investigationem non esse processum iudicalem, sed eo fine habitam, et eo modo faciendam, ut ad cognitionem veritatis diligentiori qua poterit ratione perveniatur, adeo ut unusquisque consiliarius, perpensis omnibus, opinionem de veritate factorum, quibus causa innititur, efformare quam accurate possit. Moneat etiam ne quid in investigatione fiat, quod aut ipsos, aut alios periculo damni vel gravaminis exponat, praesertim ne locus detur actioni libelli famosi, vel alii cuicumque processui coram tribunali civili.

6. Relatio causae legatur coram Consilio ab Episcopi officiali, qui etiam ad interpellationes respondebit a praeside vel ab aliis consiliariis per praesidem faciendas ad uberiores rei notitiam assequendam.

7. Deinde in Consilium introducatur rector missionarius, qui responsum a se confectum leget, et ad interpellationes similiter respondebit, facti ipsi plena facultate ea omnia in medium afferendi, intra tempus tamen a Consilio determinandum, quae ad propriam defensionem conferre possunt.

8. Si contigat, rectorem missionarium, de cuius causa agitur, nolle ad Consilium accedere, iterum datis literis vocetur, eique congruum temporis spatium ad comparandum praefiniatur, et si ad constitutum diem non comparuerit, dummodo legitime praepeditus non fuerit, uti contumax habeatur.

9. Quibus omnibus rite expletis, Consiliarii simul consilia conferant, et si maior pars consiliariorum satis constare de factis arbitretur, sententiam suam unusquisque consiliarius in scriptis exponat rationibus quibus nititur expressis; conferantur sententiae; acta in Consilio ab episcopi officiali redigantur, a praeside nomine consilii subscribantur, et simul cum sententiis singulorum in extenso ad Episcopum deferantur.

10. Quod si ulterior investigatio necessaria vel congrua videatur, eo ipso die, vel alio ad conveniendum a Consilio constituto, testes vocentur, quos opportunos Consilium iudicaverit, audito etiam rectore missionario de iis quos ipse advocandos esse voluerit.

11. Singuli testes *pro causa* seorsim et accurate examinentur a praeside et ab aliis per praesidem, absente primum rectore missionario. Non requiratur iuramentum, sed si testes ipsi non renuant, et se paratos esse declarent ad ea quae detulerint iuramento, data occasione, confirmanda, fiat adnotatio huiusmodi dispositionis seu declarationis in actis.

12. Consentientibus testibus, et dirigente prudentia Consilii, repetatur testimonium coram rectore missionario qui et ipse testes si voluerit interroget per praesidem.

13. Eadem ratione qua testes *pro causa*, examinentur testes *contra causam*.

14. Collatis tunc consiliis fiat ut supra n. 9.

15. Quod si testes nolint aut nequeant Consilio assistere, vel eorum testimonium nondum satis luculentum negotium reddat, duo saltem ex Consilio deputentur, qui testes adeuntes, loca invisentes, vel alio quocumque modo poterunt, lumen ad dubia solvenda requirentes, relationem suae investigationis ad Consilium deferant, ut ita nulla via intentata relinquatur ad verum moraliter certo cognoscendum antequam ad sententiae prolationem deveniatur.

16. Omnia acta occasione iudicii in medium allata accurate in Curia Episcopali custodiantur, ut in casu appellationis commode exhiberi valeant.

17. Si vero contingat, ut a sententia in Curia Episcopali prolata ad Archiepiscopalem provocetur, Metropolitanus eadem methodo in causae cognitione et decisione procedat.

Datum Romae ex aedibus praefatae S. Congregationis die 20 Iulii anni 1878.

IOANNES CARD. SIMEONI, PRAEFECTUS,

IOANNES BAPTISTA AGNOZZI, SECRETARIUS.

INSTRUCTION.

(TRANSLATED BY REV. F. P. WARD.)

Of the Sacred Congregation of the Propagation of Faith Concerning the Mode to be Observed by the Bishops of the United States of North America in Inquiring into and Determining Criminal and Disciplinary Cases of Clergymen.

Although the Second Plenary Council of Baltimore, recognized by the Apostolic See, decreed that a certain determinate form of trial, already established by the Provincial Council of St. Louis, should be observed by the ecclesiastical courts of the dioceses of the

United States of North America, in dealing with criminal cases of clergymen, yet it is well known by experience that the established mode of trial is not, in every respect, equal to providing against the complaints of those on whom some punishment has happened to be inflicted. For it often happens in these latter times, that priests condemned—especially removed from the office of missionary rector—by trials entered upon and sentences imposed in that way, have, here and there, complained of their prelates, and frequently even have had recourse to the Apostolic Sec. But it is to be regretted that in the records sent, it not rarely happens that very many necessary things are wanting, and when everything is weighed, grave doubts often arise as to the credit to be attached or denied to the documents offered in these cases.

The Sacred Congregation of the Propagation of Faith, seriously weighing all these considerations, has judged it for the interest of justice that some remedy should be prepared for these disadvantages in order that innocent clergymen may not be unjustly punished, nor those accused of any crime escape due punishment through a form of trial not sufficiently exact. Which (remedy) indeed it (S. C.) could easily supply, if it would direct that all the prescriptions, wisely set forth by the sacred canons for ecclesiastical trials, especially for entering upon and deciding criminal cases should be rigorously observed. But considering that, in the aforesaid regions of the United States, this can not easily be observed, it has concluded to make provision that at least those investigations that are deemed entirely necessary, be made concerning the crime committed, before punishment is inflicted.

Therefore, with the approbation of our Most Holy Lord, Leo XIII., by Divine Providence Pope, the Sacred Congregation, in a general meeting held on the 25th day of June, 1878, has decreed and expressly commanded that each and every Bishop of the above mentioned country, in a Diocesan Synod to be called as soon as possible, select, from among the most approved, and so far as they can, from among those skilled in canon law, five, or where from the peculiar nature of the case, so many cannot be had, three priests, with whom a certain Judicial Council, or, so to speak, Commission of Investigation should be formed, and over the same they should place as President one of those so chosen. But, if for some grave reason, the Diocesan Synod cannot be held immediately,

five, or, as provided above, three ecclesiastics should be appointed in the meantime, by the Bishop to the office in question.

The principle duty of the commission thus constituted will be to call up for examination, according to the rule soon to be proposed, criminal and disciplinary cases of priests and other clerics, to well and truly inquire into them, and thus afford aid to the Bishop in deciding them. Moreover it is proper that those chosen for this duty have a care that accurate investigations be made, that those evidences be brought out and everything be elicited from the one who is presumed guilty, which are considered necessary to finding out the truth, and which may afford certain or sufficiently solid reasons for safely and prudently giving a just decision. But if there is question of the removal of any Rector of the mission, he cannot be removed from the office entrusted to him unless three members, at least, of the aforesaid Commission have been employed by the Bishop to examine the case, and their advice has been heard. The chosen counsellors will remain in office up to the next Diocesan Synod, in which either they should be continued in office, or others designated. But if, in the meantime, the prescribed number of counsellors be diminished by death, or resignation, or other cause, the Bishop—outside the Synod—should substitute others in place of those wanting, as ordered above.

I. There should be no recourse to the Commission of Investigation unless clear and definite exposition of the cause that impels him to the final removal, having been previously made by the Bishop, the missionary rector prefers that the matter be brought before the Council, rather than to freely give up the office and trust.

II. The matter having been brought to the Council, the Bishop should entrust to his Vicar-General, or to another priest, appointed for the purpose, the presentation of the case in writing, together with an exposition of the investigation thus far made, and of the circumstances which specially affect the case or its demonstration.

III. He will indicate, by letter, to each and every counsellor, the place, the day and a convenient hour for meeting.

IV. He will also cite, by letter, the missionary rector, in the case, to the time and place appointed for holding the Council, exposing, in detail, the cause of his removal, unless prudence forbids, as in the case of an occult crime, and admonishing the rector to pre-

pare, in writing, an answer, supported by his reasons, to the charges, which were brought in the exposition of the case, or previously, by word of mouth, or then in writing.

V. When the counsellors meet at the appointed time and place, the Bishop should impose secrecy upon them in regard to what may be heard in the Council. He should admonish them that the investigation is not a judicial process, but had for this end, and to be made in this manner, that, with all possible care, a knowledge of the truth may be arrived at, so that each counsellor, having weighed all things, may form as careful an opinion as possible about the truth of the facts by which the case is supported. He should also advise them that nothing be done in the investigation which may expose them or others to the danger of loss or injury, especially that no occasion be given for an action for libel, nor for any process whatever before a civil tribunal.

VI. The statement of the case should be read before the Council by the Bishop's official, who also will answer the questions to be put by the President or by the other counsellors through the President for obtaining a fuller knowledge of the matter ;

VII. Then the Missionary Rector should be brought into the Council, who will read the answers prepared by himself, and who, in like manner, will answer the questions, full opportunity being given him of presenting, within a time to be determined by the Council, all those things which can contribute to his own defense.

VIII. If it should happen that the Missionary Rector in the case should be unwilling to come to the Council, he should be summoned a second time, by letter, and a suitable space of time fixed for his appearing, and if on the appointed day, he has not appeared, provided he has not been legitimately hindered, he should be considered contumacious ;

IX. All of which being properly completed, the Counsellors should consult together, and if the majority deem that the facts are sufficiently proved, each Counsellor should set forth his opinion, in writing, expressing the reasons by which it is supported—the opinions should be compared ; the records of the Council should be drawn up by the Bishop's official, signed by the President, in the name of the Council, and together with the opinions of each individual in full, brought to the Bishop.

X. But if further investigation should seem necessary or fitting,

on that day, or on another appointed by the Council for assembling witnesses, whom the Council has judged proper should be called, the Missionary Rector also being heard in regard to those whom he may wish to have called.

XI. Each witness *for the case* should be examined carefully, and by himself, by the President and by others, through the President, the Missionary Rector, at first, being absent. No oath should be required, but if the witnesses themselves do not refuse and declare, that occasion being given, they are ready to confirm by oath what they have offered in evidence. A note of this disposition or declaration should be made in the records.

XII. If the witnesses consent, and the prudence of the Council direct, the testimony may be repeated in the presence of the Missionary Rector, who may himself, if he so desire, interrogate them through the President.

XIII. Witnesses *against the case* should be examined similarly as those *for the case*.

XIV. Opinions having been compared, let it be done as above No. 9.

XV. But if the witnesses are unwilling, or cannot be present at the Council, or if their testimony does not render the matter sufficiently clear, at least two of the Council shall be appointed, who after approaching the witnesses, visiting their houses, or in any way they can, obtaining light to solve the doubts, should report to the Council, so that no way may be left untried for knowing the truth, with moral certainty before a decision is given.

XVI. All the facts presented on the occasion of the trial should be carefully kept in the Episcopal archives, so that in case of an appeal, they can easily be exhibited.

XVII. In the event of an appeal to the Archiepiscopal Court, from the sentence imposed in the Episcopal Court, the Metropolitan should proceed in the same manner in the examination and decision of the case.

Given at Rome, from the house of the aforesaid Sacred Congregation, July 20th, 1878.

JOHN CARD SIMIONI, *Prefect*,

JOHN BAPTIST AGNOZZI, *Secretary*.

AD DUBIA

*Circa modum servandum ab Episcopis Foederatorum Septentrionalis
Americae Statuum in cognoscendis, et definiendis causis
criminalibus et disciplinariis Clericorum.*

Instructio diei 20 Iulii 1878 lata est de casibus, in quibus ecclesiastica poena seu censura sit infligenda, aut gravi disciplinari coercitationi sit locus. Hinc Concilii plenarii Baltimorensis II. decreta N. 125 quoad naturam Missionum, NN. 77, 108 quoad iuridicos effectus remotionis Missionariorum ab officio nullatenus innovata seu infirmata fuerunt.

Episcopi vero curent, na Sacerdotes sine gravi et rationabili causa de una ad aliam Missionem invitos transferant. Quod si de alicuius Rectoris definitiva remotione a munere in poenam delicti infligenda agatur, id Episcopi executioni non mandent, nisi audito prius Consilio.

II. Electio Consiliariorum facienda est in Synodo ad instar deputationis, seu canonicae electionis Iudicum Synodali, qui non a clero, sed ab Episcopo eliguntur, audito quidem consilio Clericorum in Synodo, *etsi ex causis sibi notis illud amplecti postea Episcopus noluerit*, ut bene observat Benedictus XIV *De Syn lib. V num V*. Hinc absonum est, ut in casu de quo agit Instructio, horum Consiliariorum electio ad Clerum pertineat.

Extra dynodum electio absolute ad Episcopum pertinet, quem decet, ut votum audiat reliquorum Consiliariorum in casu subrogationis alicuius qui defecerit, prout Episcopus in casu deficientis iudicis Synodalis debet *exquirere Capituli consilium, sed illud sequi non tenetur*.

III. Votum a Consilio datum est semper consultivum, et sententia definitiva Episcopo est reservata, quando enim Canones dicunt aliquid ab Episcopo de Capituli vel Cleri consilio agendum esse, non propterea necessitatem ipsi Episcopo inducunt illud sequi, nisi expresse id cautum sit. Hinc recte dicitur in Instructione, hos Consiliarios *Episcopo in causis definiendis auxilium praebere* minime vero ipsos decidere. Sed inquisitiones actae, et opinio paudita a Consiliariis est semper inserenda processui.

Ex quibus patet officium Consiliariorum iudiciale quidem esse, cum instructio sit iisdem commissa, ac tamquam Adsessores Episcopo adsistant: sed patet etiam iudicialis et definitivae sententiae prolationem Episcopo esse unice reservatam.

IV. Per Instructionem sublata non est Episcopis extraordinaria facultas procedendi ad suspensionem ex informata conscientia, quatenus gravissimas et canonicas causas concurrere in Domino judicaverint, aut gravi et

urgente necessitate pro salute animarum, etiam non audito consilio, remedio aliquo providendam esse censurint.

Liberum cuique Rectori est alium Sacerdotem ab Episcopo approbandum, secum habere coram consilio sive and simplicem adstantiam sive ad suas animadversiones aut defensionem exhibendam.

JOAN. CARD. SIMEONI SACR. CONG. PRAEF.

J. B. AGNOZZI, SECRET.

SUPPLEMENT TO INSTRUCTION.

(TRANSLATED BY REV. F. P. WARD.)

With reference to doubts about the mode to be observed by Bishops of the United States of North America in enquiring into and Determining Criminal and Disciplinary Cases of Clergymen.

The instruction of the 20th of July, 1878, was issued concerning cases in which ecclesiastical punishment or censure may be inflicted or in which there may be questions of grave disciplinary coercion, hence the decrees of the Second Plenary Council of Baltimore, No. 125, in relation to the nature of missions, and Nos. 77 and 108 in relation to the judicial effects of the removal of missionaries from office, are, in no way, innovated upon or weakened. But Bishops should be careful not to change priests unwilling from one mission to another without grave and reasonable cause. But if there is question of the definitive removal of any rector from office in punishment of crime, the Bishop should not inflict the punishment, unless the council has previously been heard.

II. The choice of the counsellors is to be made in Synod after the manner of the appointment or canonical choosing of Synodal Judges, who are chosen, not by the clergy, but by the Bishop, after hearing the advice of the clergy in Synod, although, for reasons known to himself, the Bishop may be unwilling to embrace it; as Benedict XIV well observes (*De Syn. Lib. V., Cap. V., No. 5*). Hence it is absurd to say that in the case of which the Instruction treats the choice of these counsellors belongs to the clergy.

Outside the Synod the choice belongs exclusively to the Bishop, whom it becomes to hear the opinion of the rest of the counsellors in case of the substitution in the place of one wanting just as he ought to seek the advice of the chapter in case of substitution in place of one wanting Synodal Judge, but he is not bound to follow it.

III. The opinion given by the council is always advisory, and the definitive sentence is reserved to the Bishop; for when the canons say that anything is to be done by the Bishop by the advice of the chapter or clergy, they do not impose on him the necessity of following it, unless that is expressly stated. Hence it is correctly stated in the Instruction, that these counsellors "afford aid to the Bishop in deciding cases," but they by no means decide them. But the report of the enquiry and the opinion given by the counsellors are always to be inserted in the process.

From which it is clear that the office of the counsellors is indeed judicial since the examination is committed to them, and they aid the Bishop, as counsellors, but it is clear also that the pronouncing of the judicial and definitive sentence is reserved exclusively to the Bishop.

IV. By the Instruction Bishops are not deprived of the extraordinary faculty of suspending *ex informata conscientia*, so far forth as they judge before God that very grave and canonical reasons concur, or where in grave and urgent necessity for the salvation of souls, they have thought some remedy should be provided without having advice. Each rector is at liberty to have with him before the Council another priest, to be approved by the Bishop, either as a simple assistant or for exhibiting his observations or defense.

JOHN CARD SIMEONI,

Pref. S. Congregation.

J. B. AGNOZZI,

Secretary.

Below will be found copies in Latin and verified English translations of letters of Cardinals Franchi and Simeoni to Rt. Rev. Bishop Tuigg, relative to Rev. Father Sheehan, as duly proved and admitted in evidence, and being marked Exhibits Nos. 1 to 6, inclusive.

COPY OF LETTER FROM CARDINAL FRANCHI.

Original.

Nuper Romam advenit sacerdos istius Diocesis nomine Shian, qui in vitium ebrietatis valde proclivis videtur. Ipsi ut per aliquot dies spiritualibus exercitiis vacaret mandavi et nunc moratur in monasterio Passionistarum in Urbe, ubi expensis hujus S. Congregationis sustentatur. Spero fore ut salutaribus directoris spiritualis consiliis adjutus ad meliorem frugem redire eamque in posterum, quae sacerdotem decet, sectari velit vitae rationem, Cum vero mediis ad sustentationem necessariis omnino destituatur, oportet, ut A. Tua ipsum in istam ad quam pertinet dioecesim quam primum revocet, ejusque inopiae ea qua fieri poterit ratione consulere satagat. Optimum quidem esset, si A. Tuaeum in aliquam religiosam communivitatem recipi curaret, ubi aliquo munere fungens (eo vel magis quod ingenio minime carere videtur), atque sub vigilantia et custodia vitam agens opportunum medicamen invenire posset, atque sensim sine sensu a praefato vitio recedere.

Rogo igitur A. Tuam, ut hoc de re quantocius responsum ad me mittat.

* * * * *

Post haec Precor Deum ut te diutissime sospitet. Romae ex Aed. S. C. de Prda Fide. die 31. Januarii, 1878.

A. T. Uti Frater addictissimus

A. CARD. FRANCHI, Prae.

J. B. AGNOZZI, Secty.

R. P. D. Joanni Tuigg, Epo. Pittsburghensi et admini. Diocesis Alleghensis.

Translation.

Most Illustrious and Rt. Rev'd Sir :

Lately there came to Rome a priest of that (your) Diocese named Shian, who seems to be much prone to the vice of drunkenness. I commanded him to make a spiritual Retreat for some days, and he is now staying at the Passionist Monastery in the City (of Rome) where he is supported at the expense of this Sacred Congregation. I hope that, assisted by the salutary counsels of the spiritual director, he will attain better results, and in future will follow that course of life which becomes a priest. Since however he is entirely destitute of the necessary means of support it is necessary that your excellency recall him as soon as possible to that Diocese to which he belongs, and that your Lordship thus care by such means as your Lordship can, to provide for his destitution.

It would be best, indeed, if your Lordship would see that he be received into some religious community, where filling some office (this especially as he seems by no means to lack talent) and living under vigilance and guardianship he may find an opportune cure, and gradually withdraw from the aforesaid vice.

I ask your Lordship to favor me with an answer regarding this matter as soon as convenient.

* * * * *

I pray God to long preserve you etc. Rome. etc.. 31st Jan'y, 1878.

Your most devoted Brother.

A. CARD. FRANCHI, Prae.

J. B. AGNOZZI, Secty.

Rt. Rev. Jno. Tuigg, Bp. of Pittsburgh and Admin. of Diocese of Allegheny.

I hereby affirm that the above is a verbatim copy of all those parts of Cardinal Franchi's letter, dated Jan. 31, 1878, which relate to the Rev'd gentleman named in the letter. Also a correct translation of same.

Pittsburgh, Pa., May 2d, 1881.

P. F. QUIGLEY.

COPY OF FIRST LETTER FROM CARDINAL SIMEONI.

Original.

Naperrimis meis litteris A. Tuæ significavi R. D. Patritium Sheehan morari et expensis hujus S. Congnæ sustentari in monasterio Passionistarum in Urbe. Ipse salutaribus Directoris spiritualis consiliis adjutus videtur in præsentiarum meliorem sectari vitæ rationem. Attamen diutius in eodem monasterio manere non potest. præsertim cum Capitulum Gle inibi quamprimum sit habendum. Ex alia parte optime intelliget A. Tua, ipsum perpetuo Romæ manere et expensis S. Congnæ sustentari non posse, neque adejus sustentationem ullo modo sufficeret annum subsidium 50 scutatorum ab A. Tua letteris diei 11 elapsi mensis Martii oblatum

Omnibus igitur mature perpensis, visum est omnino expedire, ut idem sacerdos in Americam redeat. curet que A. Tua meliori ratione qua poterit, ut ipse sive in hospitali, ubi aliquo officio fungi posset, sive in alio instituto istius vel alterius diocesis sustentetur.

* * * * *

Romæ ex Aed. S. C. de Prga Fida,
die 2 Maii, 1878.

Uti frater addictissimus,

JOANNES CARD. SIMEONI, Præf.

J. B. AGNOZZI, Secty.

R. P. D. Joanni Tuigg, Ep̄o. Pittsburgensi et admi. Diocesis Alleghensis.

Translation.

Most Illustrious and Rt. Rev'd Sir:

In my very recent letters I signified to your Lordship that Rev'd Mr. Patrick Sheehan is now staying at the Passionist monastery in this city, and at the expense of this Sacred Congregation is supported there. Aided by the salutary counsels of the spiritual director, he seems at present to follow a better life. Nevertheless, he can not longer remain at that monastery, especially as a general chapter is to be held there as soon as possible. On the other hand, your Lordship will very well understand that he can not always remain at Rome and be supported at the expense of the Sacred Congregation, nor would the annual payment of the 50 dollars, forwarded by your Lordship in letters of the 11th of last March, suffice by any means for his support. Wherefore, all things being carefully considered, it seems entirely expedient that the same priest return to America, and your Lordship will provide by the best means you can that he be supported, either in a hospital where he can perform some duties, or in some other institute of that or of some other diocese.

* * * * *

Rome, Buildings of Propaganda, May 2d, 1878.

Your most devoted brother,

JOHN CARDINAL SIMEONI, Prefect.

J. B. AGNOZZI, Sec'y.

Rt. Rev. Jno. Tuigg, Bp. of Pittsburgh and Admin. of Diocese of Allegheny.

The above is a correct *verbatim* copy of all of that portion of Cardinal Simeoni's letter, dated May 2d, 1878, which relates to Rev'd Mr. P. Sheehan. Also a correct translation of same.

Pittsburgh, May 2d, 1881.

P. F. QUIGLEY.

COPY OF SECOND LETTER FROM CARDINAL SIMEONI.

Original.

Illme ac Reme Domine :

R. D. Patritius Sheehan istius Dioecesis Sacerdos oriundus, postquam ad quaedam sua particularia negotia tractanda, diu hic Romae remanserit, nunc in patriam suam redire jusus est cum ejus longior in Urbe mora S. Congnimitia impensae, et illi ipsi inutilis prorsus evadat. Ast siquidem per aliquod tempus spiritualibus exercitiis sedulo vacavit, hinc sperandum est in posterum eam vitam fore acturum, quae ecclesiasticum virum maxime decet.

Illum propterea redeuntem charitativae episcopali vehementer commendo: nec dubito Te ejus opera pro sua idoneitate in exercitio S. Ministerii quopoterioris modo et ratione adhibiturum fore.

Interim precor Deum ut Te diutissime sospitet.

Romae ex Aed. S. Congnis. de Prop. Fide, Die 24. Augusti 1878.

A. T. Uti frater Addictus,

JOANNES CARD. SIMEONI, Praefectus

Pro R. P. D. Secrio.

ACH RINALDINI, Substitus.

Re. P. D. Joanni Tuigg, Epo Pittsburghensi.

Translation.

Most Illustrious and Rt. Rev'd Lord :

Rev'd Mr. Patrick Sheehan, a priest coming from your diocese, after having remained here at Rome a long time to attend to certain particular affairs of his own, now has been commanded to return to his own country, since his longer stay at Rome is too burdensome to the Sacred Congregation, and is entirely useless to him.

But since for some time he sedulously engaged in making a spiritual retreat, it is to be hoped that in future he will lead that life which very much becomes an ecclesiastic.

I most earnestly recommend him on his return to your episcopal charity: nor do I doubt that, in such manner and way as you can, you will make use of his labors according to his capacity in the exercise of the sacred ministry.

Meantime I pray God to benignly protect you, etc.

Rome, Buildings of the Sacred Congregation of the Propaganda Fide, 24th day of August, 1878.

Your Lordship's devoted brother,

JOHN CARDINAL SIMEONI, Prefect.

For the Rev. Father Secretary,

ACHILES RINALDINI, Substitute.
Rt. Rev. John Tuigg, Bp. of Pittsburgh

The above is a correct *verbatim* copy of all that portion of Cardinal Simeoni's letter, dated August 24th, 1878, which relates to Rev'd Mr. P. Sheehan. Also a correct translation of the same.

Pittsburgh, May 2d, 1881.

P. F. QUIGLEY.

EXTRACTS

From Decrees, etc., Council of Baltimore and Regulations of Diocese of Pittsburgh, referred to in the foregoing evidence, and Translations thereof by Rev.

P. F. Quigley, D. D.

DIOCESAN REGULATION ON APPROBATION.

Original.

7. Sacerdotes, stiam post quam sacramenta administrandi potestatem illis commissimus, secundum morem laudabilem in alliis locis vigentem, pluries examini subjiciemus, ut sic sacrarum disciplinarum, studium foveatur, et per experientiam additam scientia maturior et accuratior fiat.

8. Examinatores ergo in hunc finem constituemus. Eorum erit mense Novembris in urbem episcopalem convenire et omnes examini subjicere. Qui per septennium sacro ministerio cum laude functi sunt huic examini non subjiciemus, qui autem post hac ordinabuntur, vel qui ultimo biennio ordinati sunt, quinque diversis annis examinabuntur, antequam plene approbati habeantur. Qui minus septennio sacris muneribus functi sunt, examinari quoque debent, sed cuilibet indicabimus quoties id ab eo fieri requiremus.

9. Notum fiet omnibus ab ipso anni initio quae erit materia examinis, ut quisque paratus esse possit. Facultates autem cuilibet concedentur tantum de anno in annum, donec quinquies, ut supra indicatum est, examini subjecti qualibet vice approbati fuerint. Tunc tantum plene approbabuntur et facultates tribuentur illis usque ad revocationem. Nemo autem posthac parochus seligetur, nisi sic plene approbatus fuerit.

Decreta Dioec. Pittsb'g, pp. 7 and 8.

Translation.

7. According to the laudable custom obtaining in other localities, we will frequently subject priests, even after we have committed to them the power of administering the sacraments, to an examination, in order that thus the study of sacred sciences may be fostered, that science, by additional experience, may become more accurate and more mature.

8. For this object, therefore, we will appoint examiners. It will be their duty to assemble in the month of November, in the Episcopal city, and subject all to the examination. Those who, for the space of seven years, have exercised the sacred ministry in a praiseworthy manner, we will not subject to this examination: but those who shall be ordained hereafter, or who have been ordained within the last two years, shall be examined for five years before they shall be considered fully approved. Others, who have exercised sacred functions less than seven years, also must be examined, but to each one we will signify how often we shall require this from him.

9. The matter of the examen shall be made known to all from the beginning of the year, so that every one may be prepared. Now faculties shall be granted to each one from year to year, until having been subjected to the examen, as above stated, for five years, and approved each time. Then only shall they be fully approved, and shall faculties be granted them until revoked. For the future no one shall be selected as pastor until thus fully approved.

QUALIFICATIONS MUST BE PROVEN BEFORE APPOINTMENT.

Original.

Utrum is, qui ordinari desiderat, in dubio praesumatur idoneus, vel hoc probare teneatur? Quaestio hujus—modi procedit generaliter in omnibus qui promoveri desiderant. Utrum is, qui ordinari desiderat, in dubio praesumitur dignusque idoneus? Vel potius teneatur probare suam idoneitatem? Haec questio procedit quoad omnes illas qualitates, ad legitimam sacrorum ordinum receptionem requisitas, de quibus scrutinium ordinandorum institutum potest ac debet: ut puta genus, an sit legitime natus; quoad patriam, ut sciatur an sit subditus episcopi; quoad personam an non sit corpore vitiatus, quoad aetatem; quoad mores doctrinamque ac hujusmodi. Et haec quaestio est notabilis, quia procedit non solum in ordinandis sed generaliter in quibuscumque aliis, qui assumi ad aliquam dignitatem, vel officium desiderant.

Ordinandorum idoneitas in dubio non praesumitur, sed est probanda.

Regula est, praesumitur quis bonus et idoneus, donec contrarium probetur. Resp. I. Ordinandorum idoneitas in dubio non praesumitur, sed est probanda. Ita communis; et patet ex ipsa praxi Ecclesiae, tam serio praevisum ordinandorum scrutinium atque inquisitionem circa ipsorum genus, morum probitatem, doctrinam, atque alia ad statum clericalem pertinentia requirentis, ut videlicet hoc modo eorundem idoneitas antea debite probetur. Accedit ratio: quia, licet regulariter quis praesumatur bonus, et idoneus, donec contrarium probetur tradit Mascardus de Probationibus, Concl. 879, No. 1; haec ipsa tamen regula plures patitur limitationes, atque fallentias, quae impraesentiarum locum habent.

Translation.

"Is one who desires to be ordained presumed in a case of doubt to be fit, or is he bound to prove his worthiness? This question extends in general to all who desire to be promoted.

It is asked whether he who desires to be ordained is, in case of doubt, to be presumed worthy? or is he bound to prove his worthiness?

This question refers to all the qualities required for the lawful reception of the Holy Orders, regarding which (qualities) there can be, and ought to be instituted a strict examination; as to one's family and one's lawful birth; one's country, in order to know whether one be a proper subject; one's person, as to one's health, etc.; one's age, morals and doctrine. This is a prominent question, because it extends not only to those about to receive Holy Orders, but, in general, to all who desire to obtain any office or dignity.

In a case of doubt, the worthiness of those about to be ordained is not presumed, but must be proven. *The Rule* is, one is presumed to be good and worthy until the contrary is proven.—Answer. In case of doubt worthiness is not presumed, but must be proven. Thus the common teaching: This is evident from the practice of the Church which so earnestly examines candidates for Orders, as to their integrity of morals, knowledge and other qualifications required for the clerical state, in order that their worthiness may be rightly proven. It is likewise proven by reason, because, although one is regularly to be presumed good and worthy, until the contrary is proven, yet this rule admits of many exceptions and limitations. First this rule is limited when there is question

Fallit haec regula, ubi agitur de praejudicio tertii. Et primo quidem regula illa limitatur, ac fallit, ubi agitur de praejudicio tertii quod ex tali praesumptione idoneitatis oriri potest, atqui in collatione ordinum, ob praesumptam idoneitatem ordinandorum facta, agitur de magno praejudicio tertii seu ecclesiae, ne forte idonei ordinentur, atque in Ecclesiae ministros assumantur.

* * * Ubi agitur de praejudicio tertii, non sufficit praesumptio, sed debeat fieri plena probatio. * * * Hinc in simili ac ne creditori praejudicium generetur, fidejussor non praesumitur idoneus facultatibus nisi probetur.

* * * Unde sive quaeratur de promovendis ad beneficia vel ordines, sive de personis ad officia, vel dignitates sublimendis, ille qui talia petit dignus non praesumitur nisi probetur: nam idoneitas ad ista, requirit plures qualitates, non solum intrinsecas, sed etiam extrinsecas, quæ non praesumuntur. *Reiffenstuel*, Vol. I., pp. 475 and 476.

of injury to a third party, which (injury) can arise from the presumption of unworthiness. Now, in the conferring Orders in case of presumed worthiness of the *ordinandi*, there is a question of great prejudice to a third party, or to the Church, lest unworthy subjects be ordained, and received as ministers of the Church. * * * When there is question of prejudice to a third party, presumption is not sufficient, but full proof must be had. * * * In a parallel case—lest prejudice arise to a creditor, the surety is not presumed responsible, unless he is proven to be so. * * *

Wherefore when there is a question of promotion to benefices, or orders, or of promoting persons to offices or dignities, whoever asks for such is not presumed worthy, unless he is proven so: for worthiness for such things as these requires many qualities, internal and external, which are not presumed."

Reiffenstuel, Vol. I., pp. 475 and 476.

STATUTE ON RESIDENCE.

Original.

Statuimus et declaramus quemlibet sacerdotem qui pro quacumque hujus provinciae diocesi ordinatus fuerit, teneri vi promissionis in ordinatione factae ad permanendum in eadem diocesi, et ad se subjiciendum praesuli suo usquequodum canonice dimissus fuerit.

Con. Plen. II., Balt., p. 75, No. 109.

Translation.

We enact and declare that every priest, ordained for any Diocese in this province, is bound by force of the promise made in his ordination to remain in the Diocese, and subject himself to his Bishop until canonically dismissed.

II Plen. Coun., Balt., p. 75.

TRIAL FOR CRIMINAL CAUSES.

(Decree No. 77.)

Original.

Demum, ex eorundem Consultorum numero, si Episcopo videatur, seligan- tur Judices Causarum, qui sacerdotes criminis postulatos in prima instantia, ex Episcopi deligatione, judicent; juxta normam quæ in Concilio Provinciali Sancti Ludovici, anno 1855 habito, a Sancta Sede recognitus, præscribe- batur, quamque legis esse communis statuunt hujus Plenarii Concilii Patres. Decretum autem prædictum est hujus- modi:

Sacerdotes quibus per Ordinarii sententiam sacerdotii exercitium interdic- tum fuerit, nullum jus habent ad sus- tentationem ab eo petendam, cum ipsi se sua culpa missionibus operam na- vandi incapaces reddiderint. Ut au- tem omnis causa querelarum tollatur, censent Patres omnino expedire, ut ordi- narii in causis criminalibus clericor- um aut presbyterorum, servent certam judicii formam, quæ ad illam a Concilio Tridentino (Sess 24, Cap. 18, de Ref.) præscriptam quam proxime accedat; scilicet, ut Episcopus, seu ejus Vicarius Generalis, de ipsius commissione, duos ejusdem Episcopi Consultores, nec semp- er eosdem eligat, qui ei presbyterum cri- minis postulatum judicaturum coram Notario tamen ipsius Episcopi, assis- tant. Unum autem sit utriusque votum, possitque alter Episcopo accedere. Quod si ambo ab Episcopo, seu ejus Vicario, discordes fuerint, tertium tunc ex prædictis suis Consultoribus ipse eligat, et juxta eam partem, cum qua tertius convenit, causa terminetur. Si autem contigerit omnes Consultores ab ordinario electos, ab ejus sententia dis- sidere, tunc ad Metropolitanum causa referri debet, qui sententiarum motiva expendet et judicium feret. Quando autem questio erit de subdito Metropo- litani criminis postulato, et omnes As- sessores Metropolitanus ab ejus sententia dissenserint, tunc appellatio fiat ad seniore Episcopum comprovincialem, cujus sententia finalis erit, salvo sem- per sedis Apostolicæ privilegiis et auc- toritate.

Acta Decreta Con. Plen. Balt. II., p. 57 and 58, No. 77.

Translation.

Finally from the number of the same Counsellors, if it seem good to the Bishop, let there be chosen Judges of Causes who by the delegation of the Bishop, shall sit in judgment in the first instance upon priests accused of crime; according to the rule which was pre- scribed in the Provincial Council of St. Louis in the year 1855, which was recognized by the Holy See, and which the Fathers of this Plenary Council en- act as of the common law. The afore- said decree is as follows: "Priests to whom the exercise of the priesthood has been interdicted by the sentence of the Ordinary have no right to ask sup- port from him, since, by their own fault, they rendered themselves incapable of working in the missions. But that all cause of complaint may be removed, the Fathers think it entirely expedient that Ordinaries, in criminal cases of clerics or priests, should observe a cer- tain form of judgment which as near as possible approaches that prescribed in the Council of Trent, namely, the Bishop, or his Vicar-General, by his commission, shall choose two of the same Bishop's Counsellors, not always the same, who shall assist him when about to judge a priest accused of crime. Each shall have one vote, and either can agree with the Bishop. But if both dissent from the Bishop or his Vicar-General, let him choose a third member of the aforesaid Counsellors, and let the cause be decided in favor of the party with whom the third (as- sociate judge) shall side. But if it happen that all the Counsellors chosen by the Ordinary dissent from his opin- ion, let the cause be referred to the Metropolitan who shall weigh the rea- sons of the opinions and pronounce judgment. But when there is question of the subject of the Metropolitan, etc

Decree of Plen. Council, Balt. II, p. 57 and 58, No. 77.

PROVISION FOR INFIRM PRIESTS.

(Decree No. 90.)

Original.

Ne Sacerdotes, cum sacri ordinis decore, mendicare, vel egestatem patir cogantur, episcopos HORTAMUR, ut fideles moneant muneris quo tenentur, eis præcipue qui in verbo et doctrina laborant, congruam sustentationem suppeditare. Quod si ægritudine, vel casu aliquo jam non valeant sacris fungi muneribus, ne afflictis addatur afflictio, curent ut ea subsidia quæ necessaria judicaverint, ipsis a fidelibus quibus inservierint subministrentur. Si autem Congregatio, cui inservierit sacerdos ægrotus vel alias impeditus, fuerit adeo inops ut nequeat hujusmodi subsidia suppeditare, episcopos HORTAMUR, ut, ea qua fieri possit ratione, aliorum sacerdotum et fidelium charitatem ad iis succurrendum excitent. CURIMUS autem maxime ut in singulis dioecesibus episcopi, quamprimum commode potuerint, sacerdotum ipsorum adhibito consilio et opera, certum quemdam modum et stabilem statuunt, quo infirmis, vel ætate provectis vel alias impeditis, provideatur. Indignis autem sacerdotibus, vel qui legitimæ suorum episcoporum auctoritati repugnaverint, vel qui æs ad fundum hujusmodi generalem conferre recusaverint, hoc decretum procedere nolumus.

Acta and Decreta Con. Plen. Balt. II., p. 66, No. 90.

Translation.

Lest priests to the dishonor of their sacred order be compelled to beg or suffer want, WE EXHORT Bishops to admonish the faithful of the obligation which binds them to provide a becoming support, especially for those who labour in preaching to them. But if through sickness or other cause they become no longer able to exercise the sacred functions, lest affliction be superadded to affliction, let the Bishop take care that such support as they judge necessary be afforded them by the faithful whom they have served. But if the congregation served by the priest now sick or otherwise incapacitated be so poor as not to be able to afford such support, WE EXHORT the Bishops to excite, by such means as they can, the charity of the faithful and of the other priests to assist them. We most earnestly desire that the Bishops in all the Dioceses, with the cooperation and counsel of their priests, would, as soon as they conveniently can establish some sure and lasting means for the support of those priests who are infirm, or advanced in years, or otherwise incapacitated. But we do not wish this decree to be of any benefit to unworthy priests, or those who have resisted the lawful authority of their Bishops, or who refused to contribute to a general fund of this kind.

Dec. Counc. Balt. II., p. 66, No. 90

REVOCATION OF FACULTIES.

(Diocese of Pittsburgh.)

Original.

Sacerdos quilibet sive secularis, sive regularis qui hanc dioecesim, qualibet de causa, relinquit, eo ipso privatus maneat facultatibus omnibus in eadem illi concessis, quamvis iterum in eandem redeat, nisi speciali permissioni eas continuari concedamus.

No. 22. Decreta Pittsb'g, p. 11.

Translation.

Any priest, whether secular or regular, who, from any cause whatsoever, leaves this diocese, is deprived by that very fact of all the faculties granted to him in this diocese, although he again returns to the diocese, unless, by special permission, we grant the continuance of said faculties.

No. 22. Decrees Pittsburgh, p. 11.

DIOCESAN REGULATION ON SALARY.

Original.

Rerum adjuncta perpendentes indulgemus ut stipendium Pastorum augeatur per ducentos, Assistantium vero per centum aureos : ita ut Pastores octingentos, Assistentes vero quadringentos, aureos accipiant. Attamen si redditus scamnorum non fuerit sufficiens ad perficiendam hanc summam licebit tantum ex oblatis a fidelibus desumere quantum necessarium sit ad stipendium complendum. Si vero cui sacerdoti hoc stipendium sufficiens non videretur, licebit ei ordinarium adire eique rationes quae justæ existant aperire in ordine ad stipendium statutum augendum.

p. 37, No. 9. Statuta Dioecesis Pittsburgensis.

Syn. Dioec. A. D. 1844. Ed. 1870.

Translation.

Considering the state of affairs, we permit that the stipendiary allowance of Pastors be increased two hundred dollars and that of Assistants one hundred, so that Pastors may receive eight hundred and Assistants four hundred dollars. But if the pew rent be not sufficient to amount to this sum, it shall be allowed to take from the offerings of the faithful as much as may be required to complete the stipendiary allowance. If, however, this allowance appear to any priest insufficient, he shall be permitted to approach the Ordinary and make known to him whatever just reasons there may be to increase the fixed stipend.

Statutes of Pittsburgh Diocese.

Diocesan Synod, 1844, p. 37, No. 9.

LETTERS DIMISSORIAL.

Original.

Enixe hortamur praesules omnes hujus provinciae, ne concedant facultates sacra munera exercendi sacerdoti aliunde veniente, nisi afferat testimoniales seu dimissoriales litteras praesulis cui proxime subditus fuerat auctoritate firmatas : nec etiam concedant eas facultates sacerdoti hujusmodi, si absque causa sufficienti distulerit ultra sex menses praesulem eligere, cujus auctoritati et jurisdictioni in perpetuam subjaceat. Hoc autem decreto nolumus derogare privilegiis a S. Sede quibusdam religiosis societatibus, et missionariis apostolicis concessis.

Con. Plen. Balt. II. No. 110, p. 76.

Translation.

We most earnestly exhort all the Bishops of this Province not to grant faculties, to exercise the sacred function, to a priest coming from elsewhere, unless he present letters testimonial and dimissory, properly sealed; from the Prelate to whom he was last subject ; nor shall they grant those faculties to priests who waited beyond six months to choose the Bishop to whose authority and jurisdiction he would be perpetually subject. By this decree, however, we do not wish to derogate from the privileges granted by the Holy See to certain religious societies, and to missionaries apostolic. Second Plen. Council Balt., No. 110.

(This decree, first framed for the Province of Baltimore, was adopted in the Baltimore Council for the entire country.)

PRECEPTS OF THE CHURCH.

OBLIGATIONS OF LAITY TO SUPPORT PASTORS.

* * * * *

Q. Are there any other commandments besides the Ten Commandments of God?

A. There are the commandments or precepts of the Church, which are chiefly six, viz :

1. To hear mass on Sundays and all holidays of obligation.
2. To fast and abstain on the days commanded.
3. To confess our sins at least once a year.
4. To receive *worthily* the blessed Eucharist at Easter or within the time appointed.

5. TO CONTRIBUTE TO THE SUPPORT OF OUR PASTORS.

6. Not to solemnize marriage at forbidden times, nor to marry persons within the forbidden degrees of kindred nor clandestinely.

* * * * *

Q. Are we obliged, in conscience and justice, to contribute to the support of our pastors?

A. Yes; and by a divine precept also. St. Paul says: "*So the Lord ordained that they who PREACH the gospel should live by the gospel.*" 1, Cor. ix, 13, 14.

Q. Do the precepts of the Church oblige under pain of mortal sin?

A. Yes; "He that will not hear the Church" says Christ "let him be to thee as the heathen and publican." Luke x, 16, and Matt. xviii, 17.

Butler's Catechism, lesson xx and xxi, pages 43 and 46. Published with the approbation of Very Rev. Thos. S. Preston, Vicar General of the Arch-Diocese of New York.

EXTRACT FROM OATH OF OFFICE.

Taken by a Bishop at time of his Consecration, relating to his official duties and obligations to observe and enforce Canons.

* * * * *

“Regulas sanctorum Patrum decreta ordinationes seu dispositiones reservationes provisiones et mandata Apostolica totis viribus observabo, et faciam ab aliis observari.” * * *

[TRANSLATION.]

“I will observe with all my strength the rules (or regulations) of the Holy Fathers, the decrees, ordinances, or dispositions, reservations, provisions and Apostolic mandates, and will cause the same to be observed by others.”

Pontificali Romanum, page 85, offered in evidence by defendant.

PROMISE MADE BY PRIEST.

AT TIME OF ORDINATION.

* * * * *

EXTRACT FROM CEREMONY OF ORDINATION OF A PRIEST.

The Bishop asks the newly ordained priest kneeling before him and clasping his hands:

“Promittis mihi, et successoribus meis revirentiam et obedientiam”? Answer: “Promitto.”

[TRANSLATION.]

Question. (*By the Bishop.*) “Do you promise to me and my successors reverence and obedience”?

Answer. (*By the Priest.*) “I promise.” * *

Pontificale Romanum, page 77, offered in evidence by defendant.

EXTRA-JUDICIAL APPEALS FROM ALL GRIEVANCES, ETC.

“As a general rule it is to be admitted that an appeal can be made from all grievances extra-judicially inflicted.” This is evident from the Chapter *Cum Sit Romana*, 5 *de Appel*, where it is expressly decreed that “the appellant from a grievance before the commencement of a suit is to be heard, and that such appeals are to be heard by the Sacred Canons.” The same is evident (*Concertationi* 8 *Tit.* 15, *Liber* 2, *C.* 6), where it is thus decreed: “We decree that whoever, thinking himself aggrieved in the following instances, shall desire to have the inflicted grievances revoked by the privilege of appeal, may, within ten days (after it may have come to his knowledge), appeal, if he so wish, from elections, petitions, purveyings, and any *extra-judicial acts whatever*.” From *Leuren-sis*, approved writer on Canon Law offered in evidence by defendant.

STENOGRAPHIC REPORT OF ARGUMENTS OF
COUNSEL.

ADDRESS OF JOHN BARTON, ESQ.

If your Honor pleases, we have upon this record the evidence of an action brought by Rev. Patrick Sheehan against the Rt. Rev. John Tuigg, Bishop of the Diocese of Pittsburgh. It is as the Bishop of the diocese he has been sued; but whether he is a Methodist Bishop, an Episcopal Bishop, or a Roman Catholic Bishop, we are not informed by this record.

Why is he styled Bishop of Pittsburgh? Is that a mere designation of his occupation and standing in the community, or is he named as the representative of the diocese? I take it, as this action is brought against him, that by legal construction and correct pleading such designation or description would make the action a personal one, Rev. John Tuigg, and nothing more.

Well, does plaintiff seek for a judgment to recover against the Bishop individually, or does he want to reach some church organization.

Well, then, suppose a judgment to be obtained in this case and an execution issued, where would be their remedy and what would their writ be? Against the property of Bishop Tuigg personally, or against the property belonging to the different organizations and churches in the Diocese of Pittsburgh?

As to the latter, if their action is intended to be against the diocese, no evidence has been offered to this court to show that the Diocese of Pittsburgh, as such, has one dollar of property either personal or mixed; and the fact is that all the property in this diocese, with some exceptions which I will name, is held in the name of the Rt. Rev. John Tuigg, in trust for the different congregations, St. Paul's, St. Michael's, St. Mary's, or for the different members of the different churches or congregations who contributed to the fund to buy the property, and to build the church. But the Diocese of Pittsburgh as such has never been incorporated, and having no corporate existence can not be sued and can not hold property.

Will an action lie at common law against a religious organization by name? I think not. Such a body can act and gain standing in court only through its trustees. A body like the Methodist Episco-

pal Church of Sewickley, if it desired and intended either to buy a lot or build a church, would appoint trustees; and this particular set of individuals who act as trustees or rather officers of such an organization, it has been decided, may be sued as trustees and may themselves maintain an action to recover, say subscriptions for buying a lot or building a house of worship. But in that case they must be named as trustees and declared against as trustees, and the property which they hold by their representation is bound by the action.

Now in this case we have an action against the Rt. Rev. John Tuigg, Bishop of the Diocese of Pittsburgh, but it cannot be pretended that there was any contract, either express or implied, between Father Sheehan and Bishop Tuigg. If his action can be maintained at all, ought it not to be by a bill in equity? If there is any particular fund of which the Bishop is trustee or has control, raised from any of these congregations or different religious orders under his jurisdiction, in which Father Sheehan has an interest and which ought to be applied to his use, is not his remedy, if any he has, by a bill to compel the Bishop to discharge the duty in which he complains that he is derelict?

We have in the *20th Pennsylvania State Reports* in case of the Doe Run Valley Church vs. Phipps and Harvey, administrators, etc., of Ellis Phipps, deceased, the opinion in which case was by Lowry, J. That was the case of a subscription to a church paper which the parties got up to build a church, and before the building was completed the maker of the subscription died, and an effort was made to compel the payment of his subscription by his estate, the question was raised in the case whether a general subscription without any particular purpose or trustee named, an action would lie, and the court held it could not upon the ground that "there can be no contract without correlative parties, and it is generally essential that there be something more than a moral duty as the bond of the relation and the basis of the promise. Where the undertaking is entirely one-sided there is no right of enforcement, as there would be in case of a corporation. There can be no relation without correlation. An engagement to subscribe for the benefit of an association is necessarily a mere proposal, and therefore revocable until the association is formed. It is a promise of each for the benefit of the association whole and remains unattached and incomplete until the association

is complete. Until then, there is no one to accept the proposal, and in this particular case it was withdrawn before the death of the subscriber and before its acceptance. After his death his administrators could not and ought not to regard the proposal as open to acceptance. If, however, the association had been formed, and had contracted for a lot or for a building, such contract having been entered into on the faith of such subscription in the lifetime of the subscriber, and with his express or implied consent, he, and of course his representatives, would have been bound to pay the subscription."

Taking the rule of law as stated in the case cited, I think the plaintiff here has certainly mistaken his remedy. If he had any special contract, or payment to him of a given sum out of a particular fund, he might have brought his suit against the Roman Catholic Bishop of the Catholic diocese of Pittsburgh—trustee of some fund—to show cause, which would have been an action not dependent upon uncertainties or contingencies, and one that might have been maintained; but where the design is to proceed against unincorporated organizations a remedy is provided by the Act of 1836, by a bill in equity, which will lie in the first place, together with the proper decree to enforce the remedy, whenever justice has been denied according to their own regulations.

But here we have a common law action—an action of *assumpsit*—for a salary; and it is an action against Bishop Tuigg personally for salary which this man claims that he has earned. It is not an action on the case for refusing unlawfully and interfering to prevent him earning the salary or discharging the particular duty of the position. There might, probably, be some sense in that. If this man's claim, that he has been aggrieved by the action of his Bishop, is so, and he has no remedies by the laws of his church, he might have brought a special action on the case against the Bishop for so conducting himself as to deprive or prejudice him in the exercise of a particular right.

That is not this case, and that is not this action. However, on the contrary, it is an action of *assumpsit* for salary upon a contract express or implied.

If a Building Committee contract, in the name of the society, to build a church, and the society is a *quasi* corporation, the action would be after this manner: A. B. C. D. E. and F., Trustees of the Congregation known as the Methodist Protestant Church of

the Borough of Sewickley. That is the doctrine laid down by Judge Lowry, and a mechanic's lien in such a case must describe the property as held by the trustees for the benefit and use of that organization, and must be filed against the property held for the benefit and use of the particular denomination.

It is, in fact, a common law action against the society, being brought, not against the Trustees personally, but against them in their fiduciary capacity, and would not bind the personal property of the trustees. On the contrary, the trust property—the Church property and funds in the hands of the trustees—would alone be bound, the money first—and then, if that could not be reached, the real property of course could be levied upon and sold. If the trustees had money in their hands, then, by the aid of the equity side of the court, a decree could be made to compel them to make payment of the claim. This is his remedy under which he may compel the discovery of assets and an account by the trustees, and an application of the fund to that particular purpose. But that is not this case—this is not brought against Bishop Tuigg as Trustee of the Roman Catholic Diocese of Pittsburgh. If it had been, it might have been a complete answer to say: That the diocese, as such, owns nothing. No property is held in trust for the diocese in the name of the Bishop.

It was undertaken to show here that the Bishop of the diocese was the trustee—or, in other words, was the diocese. That was very properly answered by Dr. Quigley, who stated that you might as well say that the President of this country is the United States, or that our Governor is Pennsylvania.

So that, I think, if the Court please, that if we go no further than the form of action, which is an action of assumpsit—a personal action against the Bishop—they have not made out a case that would entitle them to recover upon an undertaking on the part of the Bishop individually to appropriate any sum whatever.

The relation that exists between them is that of a priest and a Bishop, and it is the relation growing out of the laws and regulations of the religious society to which they belong. How such a relation can be tortured into evidence to show and maintain an action of common law for the personal undertaking of Bishop Tuigg to Father Sheehan I cannot see—neither, as I have said, can I see

how even a bill would lie. That, however, is a question with regard to the remedy in his own church.

We come in the next place to this : That this man by the fact of his ordination is entitled to what they call a title—the title of a priest—which, they say, clothes him with the right of support. And that embraces the right to labor as a priest, to be employed, and to an appointment ; while on his part he is bound to abandon all secular employments, and to devote his entire labor, time and efforts to that particular calling. With all this he is entitled to a charge and to receive just such emoluments as necessarily flow and come from the position he holds and the duty he discharges.

But how shall this support, these emoluments, be furnished ? Whence can they be drawn. The church authorities have no power to levy taxes. The Bishop as such cannot levy a tax, and if he makes assessments he cannot enforce them except by persuasive means. In fact, the Bishop's own income as well as the income or support that a priest derives come entirely from the voluntary contributions of the members. If they contribute, well and good. If they do not, where is he to obtain his compensation ? As your Honor remarks, in the regulations of the Diocese of Pittsburgh it is provided, that a man who is placed in charge of a parish is allowed out of the pew rents to retain \$800. My learned friend, Mr. Watterson, says there is no such thing known in this country as parishes. If it was not, it is something singular that Bishop O'Connor would enact that in this statute, and that the enactment for salary of pastors should pass on down through Bishop Domenec to Bishop Tuigg ; but, as I was saying, these regulations that he who is in charge of a parish shall receive the collection from pew rents certain amounts, and if they are not sufficient then from any other contributions, to be raised by fairs, or in any other way that should make up the amount. That was by the custom of the Bishop ; but, as your Honor suggested yesterday, who should pay it ? Why, the Bishop personally, if he was bound by their mutual position. This is a very awkward position for a Bishop, unless he was a man of considerable wealth before he accepted the position. To support this theory, however, they cite particular instances in order to show that that was the custom, but isolated instances do not make a custom. A certain witness said that once or twice such donations had been made by Bishop Domenec. Father Nolan said he once came short, and that the differ-

ence was made up to him by Bishop Domenec. Of course, such a deficit must be raised in some way, as for instance, by an appeal to the members of the congregation and by contributions from the various organizations. The money is raised by each church, and they then apply it. All congregations are under the immediate control of priests, who are subject to the direction of the Bishop. They make their appeal to the public for a particular purpose, and so raise a fund. That is the only way of raising funds, and it has not been shown by any evidence that outside of any such fund, which a priest may thus have necessarily produced by his own labor in the field to which he has been assigned, there is any other fund under the control of the Bishop on which he can draw in order to pay deficiencies in salaries.

But they say, because he is ordained he is entitled to support. Certainly, if qualified, he is entitled to employment. This man was ordained in 1857, and was assigned to duty. On his part there was the obligation that he would continue well and faithfully to discharge that duty and to remain qualified. We find in the latter part of 1871 that he went away from the diocese, as he says, upon leave of absence; but that he had such leave of absence was never made known by him to Bishop Tuigg. He does not even pretend that he made known that leave of absence to Bishop Tuigg. He went; abandoned his parish; left his employment. He says he was sick, but if that were so he would be a retired priest, to whom some duty suitable to his condition would be assigned. It appears, however, that he was engaged in labor all the time in New York, New Orleans, and at Arkansas, where he says he got into trouble. In all these places he says he was able to discharge the duties of a priest. He left in 1871 and returned in 1875. He had been a priest absent out of the diocese without leave, so far as Bishop Tuigg knew, four years as shown by the evidence. I say so far as Bishop Tuigg knew, for so far as Bishop Domenec was concerned, we have not his testimony, he testifies that he first got leave of absence from Father Hickey, and Father Hickey testifies that it was not limited to any special time. It was in consequence of his sickness, and therefore extended through the period in which he was recuperating his health. At what particular time he obtained the letters to officiate from Bishop Domenec, and where the letters are, and where the leave of absence are or the language it was couched in, we have no evidence

to show. From Father Sheehan's testimony it appears that he has been unfortunate in his travels around the world, not preserving a single letter or scrap of paper or credentials—letters that were to him of the most vital importance, as they must necessarily be, showing leave of absence granted for an exceedingly long term, and all the letters from his Bishop, together with others that he says he has, all have disappeared, and we have only his naked statements that he had leave of absence, uncorroborated save by Father Hickey, who says that so far as his memory serves him, Father Sheehan had leave of absence and he believes it was unlimited. Of the date of those letters we have no evidence. Father Hickey does not remember the terms of his leave of absence. He does not know whether it was limited or not. He simply believes it was unlimited. Now, by the general rules of the Church, we say that was of itself a violation of the rules of the church, that all leaves of absence must be for particular, specified time. Say it was regular, was it to continue forever? We find that he returned; and we say that he returned as one who had voluntarily absented himself, without leave, from his charge and calling—from the charge of his flock; from the care of the congregation to which he had been assigned. Will it be pretended, then, that he was obeying his part of the contract?

I am using his position. When he returned in 1875 he found the same Bishop in charge of the diocese as when he obtained that leave of absence; and we find that he remained out of employment for from six to ten months. He says that he applied to Father Hickey, and rather intimates that Father Hickey threw dust in his eyes in place of going to Bishop Domenec for him, and then Bishop Domenec went to Rome, and he was prevented in that way from receiving a new charge, and then the diocese was divided. Now it is not pretended by any one that his particular relations were known at that time to Bishop Tuigg. Father Sheehan don't say that he ever explained or reported the reason of his absence to Bishop Tuigg. We find the old diocese was divided in 1876, and this particular diocese of Pittsburgh was put in charge of Bishop Tuigg, who comes into the diocese and finds Father Sheehan, whom he knows to be a priest. Further than this he knew little or nothing about him. He knew, however, that for the last five or six months under Bishop Domenec he had ceased to officiate, and lived on the other side of the river. That he was out of employment

and was not discharging his duties as a priest. He found him without a position, and it is then that he first makes his application for a mission—for an appointment to a parish.

Now, I do not care much what the canon law says upon this subject. Does not common sense, which is the best rule all the time—the rule on which all the rules of law are predicated—does not common sense teach that the Bishop would say: “Here is a man who has been absent from this diocese five years; who has been around the city four or five months unemployed; who was a priest under Bishop Domenec and went away during his time; for some cause Bishop Domenec did not reinstate him when he returned—surely, in such circumstances, it is his duty to show that he has the necessary qualifications, fitness and ability, and that his course of life has been regular before I [Bishop Tuigg] will dare to give him charge of a congregation.” He came, however, and said: I demand a mission, sir—I demand an appointment. I will not obey your request for retirement.

Bishop Tuigg was on the stand. We asked him if at the time Father Sheehan desired him to make a spiritual retreat he had of his own knowledge evidence, as Bishop, that the Father’s course of life was irregular. He said that he had. We threw him open for cross-examination, and they could have asked him that question.

The point I wish to impress upon your Honor is this: The particular position of Bishop Tuigg at that time. What was his duty? Here is a priest applying for a charge, a congregation, an important position in which the spiritual welfare of a portion of his people would be given into his keeping. Under his duty and obligation as Bishop was he not bound to know whether that man’s course of life had been regular, or whether he was suitable for the position.

After Father Sheehan came from Rome—at that time he himself says that he said: “Sir, I will see your superior.” And when he made this application the Bishop says he refused—positively refused to make a retreat. Father Sheehan, when he spoke of the second interview, after he returned from Rome, says he did go and they refused to receive him. Did he tell the Bishop that he would go? Did he submit to the decree and go and apply to the Bishop for a permit to enter that monastery? Of course the Abbot was bound to refuse admission to one coming as he came without the

necessary order, and not stating that his Bishop said for him to go there. Of course he was not received. Under the facts as stated he should have gone to the Bishop and got the proper order directing the Abbot to receive him. Then the Bishop would have been liable for his support.

The Bishop commanded him to make a spiritual retreat. Was it necessary that the Bishop should upbraid him and say: "Sir, you have been irregular in your life. You were in trouble in Arkansas; you were in trouble in New Orleans?" Father Sheehan himself says that the Bishop followed him like a sleuth hound. Certainly he did not intend to imply that the Bishop had knowledge of his actions before he became Bishop. Father Sheehan knew well what his course of life had been—what he had been doing.

And the question of right to support the answer to that is easy. He was bound to take that support according to the rules of the Church as administered by his Bishop, the Bishop then had a right to direct him to make a spiritual retreat to a monastery and there to qualify himself by a course of preparation, just as he did in Rome, and it has been stated by the Bishop expressly that if he had been sent there by his order, of course he would be liable for his support. But there is a spiritual charity in the Roman Catholic Church, and one of their tenets is, that they cannot vilify or point out the transgressions of one of their order. Hence, as your Honor must have observed, our hands are tied here. If Father Sheehan struck the Bishop on one cheek, he must turn the other. The Bishop is not allowed to turn around and say, "this man has done so and so," and all we can say for him is, as his counsel, what has cropped out in the evidence. The instructions from the Propaganda of Rome, which he compelled us to put in evidence, are sufficient to justify the cause of the Bishop here. We put the Bishop on the stand and I asked him if Father Sheehan had been irregular in his course of life. He said he had. We could do no more. It would not have been proper or a Christian act. We threw open the doors and they could have cross-examined the Bishop and asked him what his reasons were for saying this; and how, when and where he got the information; they could then have learned whether the Bishop had a reason to act as he did, but they declined to do so, and so far as they forced the evidence, of course we could not prevent it coming in.

With regard to his declarations in Arkansas, while he was running into trouble there, he says, "I didn't apply to the Bishop there for assistance. Friends may have done it for all I know. I was in trouble there." They have forced us to produce those two letters from Rome, the translations of which are printed. We dared not cross-examine him on the facts contained in them, for we had no right to probe in regard to them because of Christian charity; and the rule that governs the Bishops and ecclesiastics in that matter would not permit that course of procedure, so that I say, we are bound merely to take the crumbs of evidence that have fallen by the wayside as we went along. We have by these letters, produced by plaintiff's request, proof that when he carried his complaint to Rome, to lay his grievances before the proper authorities, they there discovered his weakness and his course of life, and ordered him to make a spiritual retreat. And then after he had obeyed them and remained in a monastery there a certain time, the Bishop contributed to his support. The Propaganda shipped him to America, where for nine months instead of reporting to his Bishop, as he ought to have done to carry out the suggestions of the authorities at Rome, we find that he again became a wanderer. He was in Baltimore and Virginia—we dare not tell what occurred for the nine months afterwards, before he appeared before the Bishop. But when he does appear before the Bishop he demands an appointment to a parish without any explanation of his conduct, after all that had occurred both here and at the places he visited. He comes home and demands an appointment to the charge of a congregation. Then the Bishop again commanded him to make a retreat. He says he refused, but nevertheless went to the Abbot, who would not receive him. If he had, as I said before, got a proper permit to be received there, in its proper form, undoubtedly he would have been received; but he was in this, as in everything else, contumacious, and was determined to take his own way and make the Bishop yield to his views of the law and his duty in regard thereto.

Your Honor, as you have the arguments and the testimony in this case, and as you say your time is short, I think I need say nothing further. I may safely leave it to you to say as a matter of common sense, whether Bishop Tuigg, under all the circumstances, could, consistently with his duty, have placed that man in charge of a congregation, and whether or not, from the fact that he had been so

long absent, he had not failed to perform his part of the contract in the case, and whether—even though he had not a scintilla of evidence—the fact that he had been absent, which facts he does not pretend to say he laid before his Bishop, but just called upon him and demanded an appointment, and, upon refusal, said ; “ Well, sir, I will lay it before your superiors.” And when we asked him if that was the Archbishop, he said : “ Bishop Tuigg had many superiors.”

Now, take the remedy. A great deal has been said upon the matter, that there cannot be an appeal without a sentence. That is to me a quibble upon a word. We know that where a judge of the lower court does that which we think is error, we may have a writ of error, or *certiorari*, and by recent Act of Assembly we can have an appeal by interlocutory decree before there is a final judgment ; and we know if an officer fails to act we may have a *mandamus*. And to all decrees we have a bill of review from the District to the Circuit Court. We know, also, that this man had a remedy as against the Bishop, you may call it a bill of *mandamus*. Or, say it is in the nature of a bill of review, it would be an application to the Archbishop, setting forth in plain language and words the cause of complaint—his claim as a priest in the diocese ; his application for employment and the refusal of the Bishop to grant his application ; and asking for the interposition of the superior authority of the Archbishop to be exercised by way of *mandamus* or bill of review, directing the Bishop to do what was right for him. That would give him a full remedy in his own church. And that he had that remedy according to all the testimony in evidence, and the laws and canons of the church, there is no doubt. Further, he had a right of appeal from the definite sentence of decree by way of an application to the Supreme Court of the Church, to require the inferior officer to discharge his duty, and to inquire in the first place whether he had unjustly and unreasonably refused to discharge his duty. He thus had his remedy in the Supreme Court at Rome if he was not satisfied with the Archbishop.

This man admits that he went to the Archbishop, and that he was shoved off and not properly treated. That he went to Rome and made certain affidavits, and when he said : “ I will apply to your superiors,” he knew well he had the right to have the action of his superiors reviewed. And now he comes in here and says there can be no appeal except a sentence has been passed. There are no

means to have the Bishop's action reviewed. Where there is no final sentence or decree their position, from their own showing, is untenable. Our mode in the civil courts is by *mandamus*. A man comes and says: "I have a cause pending before Judge White. He has refused to hear my complaint and proceed to judgment and do me justice." The Supreme Court will therefore issue a decree or direction, stating that this man says that you do not do so; and they will say, "Do so lest further complaint comes to us, or at least show further cause why you do not do so." That is an alternative *mandamus*. And we say here, that this man could have similarly had an application to the Supreme Court—to the higher church tribunal—and it would have directed the inferior authority to show cause why he did not give him his appointment. Undoubtedly he had his remedy, and could resort to it. We say he did resort to it. That he had his remedy, and that the man who goes to Rome must do as the Romans do.

A man who joins a spiritual society is bound by their laws and regulations, and the laws of said society determine his right, and if they determine his right, then as a matter of course the salary and all the emoluments will follow. In this case, even for the special amount of the salary, he had a complete remedy in his own church. If he had not he must show his right first in the tribunals of his own church, and then if the Bishop be still contumacious, and if this man is entitled to a mission, which fact was stated by his superiors, and the Bishop refused to do any particular thing, then a bill in equity might probably be filed in aid of the ecclesiastical courts, to undertake to enforce the laws of the church, but I deny that it is in the power of any one to show any authority or precedent for the assertion that any action upon assumpsit, upon a contract so brought, could be maintained against the Bishop of any diocese, or the preacher of any congregation. Because the congregation did not pay a man that which he claimed. As for example, the case of a church or congregation that owed a man something, for a breach of contract, or for any other cause. Neither in law or justice, civil or canon law, do the facts warrant the allowance of plaintiff's claim.

ADDRESS OF CHAS. F. McKENNA, ESQ.

May it Please the Court:

It is due the court that a proper acknowledgment, of the appreciation of both parties to the pending suit be tendered, for the patience and evidence of fairness and desire for justice manifested by the court since the commencement of this protracted trial, now closing. But in a more especial manner do I desire to return to the court the thanks of the defendant, and those he represents, for the exhibition of Christian charity and desire to prevent scandal in a large religious denomination, indicated by the action of the court by its more than once repeated recommendation, that this case be withdrawn and settled amicably out of court. Such considerations and promptings of respect and friendship for the common faith of both parties to this suit, was fitting on the part of your Honor presiding in the court of a State where Christianity has been decided to be part of the common law of the land; and in this case, this action has been accepted as a graceful tribute to the denomination justly entitled to the claim of being the mother of Christianity. That the case was not withdrawn, and that the Right Reverend defendant is still in court, we claim is no fault or choice of his. He is here, with all due respect to this court, and the State you represent, protesting against the right of the court to try this case, and at the very inception of the trial, as now, denying the authority of the civil law to pass upon or decide the issues which we claim are involved. The amount involved is but secondary; the principles are of vast and far reaching importance, and these principles arise exclusively, we assert, upon questions of canon law and the internal rules, regulations and discipline of the Catholic Church. We assert that the principles involved are far greater than the plaintiff realized upon bringing his ecclesiastical troubles to a civil court for settlement; because the plaintiff's interest in common with that of every citizen of this country is to keep the arm of the civil law, or the State, from any interference with churches in questions of internal regulations and discipline. To preserve the inestimable blessings guaranteed every citizen of this land in the exercise of his religion, the doctrine of the supremacy of the ecclesiastical law, over the civil in all questions of

church government and regulations must be conceded. This immunity of religious bodies from State interference is a right—an absolute right common to all citizens. To deny it, or to impair the right, is to destroy a great Constitutional bulwark under which all forms of Christianity have prospered. Why were the founders of our State, and the framers of her constitutions, so exacting in this very matter of changing the settled practice and custom of the mother country, in the principle of the State's right to interfere with and control religious organizations? The State there undertaking to establish and support by civil law a church, of course controlled the church and regulated its tribunals.

The common law of Great Britain was introduced into this country on its settlement by colonies under the British flag, and to this day, exists throughout Pennsylvania as the common law of the State, unless by express constitutional or statutory enactments repealed. With the colonial settlements under the Crown the Established Church, with church tribunals, courts and discipline, were introduced. Gradually the Crown tolerated other denominations to settle the new country. Thus before the struggle for Independence we find great varieties of religious denominations in the respective colonies. The Colonies of Virginia and South Carolina was populated chiefly by Episcopalians, and tithes were by law levied to support the Established Church. William Penn and his descendants, representing the Quaker faith, claimed Pennsylvania by right of settlement. Lord Baltimore and his colonists, Roman Catholics, for the same reason, claimed Maryland. The Dutch settlers of New York State adopted the Reformed creed, while the descendants of the Pilgrim Fathers in New England clung to the Puritan faith. So that when the colonists united for the common battle against the tyranny of the mother country, the inhabitants were so disunited on religion, that no union on an established form of religion was thought of or dreamed practicable. One of the greatest results achieved by the war for Independence, was the complete separation of Church and State, and the enactment of Constitutional guarantees of freedom to all religions.

History shows that it was not until the colonies were brought into close political union with each other in the revolutionary struggle that they accepted the doctrine now everywhere accepted and recognized in the Union, of perfect religious independence, liberty and

equality before the law, without any power in the State to control or regulate church establishments or church discipline.

On the State of Pennsylvania replacing her colonial existence there was incorporated in the Constitution or Bill of Rights in the third section of the article the following express provision : " That all men have a natural and indefeasable right to worship Almighty God according to the dictates of their own conscience ;" and that " No human authority can in any case whatever control or interfere with the rights of conscience, and no preference shall ever be given by law to any religious establishments or modes of worship."

It may be answered that the controversy here is upon a civil contract, involving nothing but dollars and cents, and in no way conflicting with this grand principle of our State Constitution. But according to my view of this case, and the issues upon which the same has been tried, and the questions directly raised for the consideration and action of the Court it does really conflict with the Constitutional principle of no interference with churches and their administration and discipline. Let me state the question : It is whether or not Bishop Tuigg, the canonically appointed and qualified Bishop of the Diocese of Pittsburgh, is a judge, constituted by his own church, to pass upon the qualification of a minister of that church, and of the fitness of such a minister to administer its sacraments in conformity with the laws of the church. Because, if a priest of the Catholic Church is not so qualified, not so sanctioned, not so endorsed by the Bishop, he is not a minister of that denomination, and has no right to enter any pulpit to expound the doctrines or teach the faith and morals of the Catholic Church, or to take charge of the pastorate and administer the ordinances of the Church. The plaintiff will admit this is proven out of St. John x., 1 : " Amen, I say unto you, he that entereth not by the door into the fold of the sheep, but climbs up another way, is a thief and a robber ?" If, then, Bishop Tuigg, was canonically invested by the laws of the Church with judicial power, and while so constituted, and by virtue of the judicial authority of which all canonists concede he is the depository, he exercised his judgment and discretion in any particular case, if for the exercise of that discretion he can be dragged into a civil court, and upon the pretext that a salary for a spiritual office is involved, his judgment can be reviewed in a civil action here, then, I say, such an action is entirely unprecedented in the Pennsylvania

Court decisions. In other States similar questions have been before the civil courts and jurisdiction has been refused. It has been decided by the Supreme Court of Illinois, in a case involving the question of the exclusive jurisdiction of the spiritual or ecclesiastical courts to pass upon a question of right to hold office in a Protestant pulpit. The case is reported in *58th Illinois Reports*, page 509, and is that of Rev. Cheeney, of Chicago. The Bishop of the Protestant Episcopal Diocese of Illinois convened a church court to pass on the question whether or not some utterances by the Rev. Cheeney were not such heresies in the judgment of the Bishop of the Protestant Episcopal Church as to justify the removal from pastorate of Rev. Cheeney. Rev. Mr. Cheeney invoked the aid of the civil courts by injunction to restrain the ecclesiastical court from trying him and enforcing the sentence of deposition from office and pastorate, alleging the same to be property and the subject of civil courts.

I quote from the syllabus: "That where there is no right of property involved except a clerical office and its salary the spiritual court is the exclusive judge of its own jurisdiction," and further, that "constitutional restrictions upon the Legislature and the courts by the Constitution of the State forbids any legislative or judicial interference with churches or voluntary religious associations, unless the rights of property or civil rights are involved in the controversy." Plaintiff here presents a claim to a spiritual office, viz: a claim of a right, a right of title and three years salary to the office, and we say that the principle enunciated in that case by the Supreme Court of Illinois is directly applicable to this case. The right or title of plaintiff as a priest to a title or office is a qualified right; not an absolute right. Distinctions of rights even as applied to property are clearly laid down and defined by Blackstone and all civil law authors. One of the absolute qualifications of that right and property of a pastor and priest is the preservation continuously of the essential of fitness required at the ordination of a priest; others are reverence and obedience to the laws of the Church, under which for centuries, the Bishop has discretionary power to pass upon the question of the original qualifications of an applicant, as well as of his preserving the same continuously. In the adjudication of the questions in this case, what is ostensibly a mere question of dollars and cents, your Honor in reality must pass directly upon the quali-

fications of the plaintiff, Rev. Patrick M. Sheehan, to earn the salary he claims he has been unjustly deprived of earning by the refusal of the Bishop. Will your Honor decide that he is in good standing; that he is qualified? You would answer No; I have no authority for that. The Bishop is the judge to decide that question. I can only pass on the question of contract and salary. To do so, and in passing upon this case you necessarily say that he is, or is not qualified. We say that as a pastor he would be entitled to receive three years salary; but the salary does not follow until the ecclesiastical question of the Bishop's power and the priest's qualifications are first determined and adjudicated. The case cited is analogous to the authority and principles we invoke and desire applied in this case. This is emphatically a question of church discipline. It is a church regulation on salary and qualifications to receive the same and nothing more. Let me illustrate: Suppose that Father Sheehan claiming to be in good standing, after years of absence, should come over to the congregation in Allegheny City, where I worship, and assume to officiate at the altar and undertake to preach, to enunciate the Catholic doctrine and to administer the sacraments, without procuring the approbation of the Bishop, do you suppose that the congregation knowing it would submit to it for a moment? Would he not, coming without authority, be an intruder? Are not all Catholics from their infancy taught that the judicial power—the power and duty of approving or of disapproving of qualifications of priests and the right and duty of appointments according to the canons vests in the Bishop? No man, no loyal Catholic has ever disputed this proposition. The plaintiff here, Father Sheehan, is the first person I ever heard to dispute the right to exercise this power by a Bishop and invoke the aid of a civil court to review the exercise of the judicial power of a Bishop. People may differ in their opinions of these rules and regulations of the Catholic Church on this subject, and some may think they are harsh, but I take it that such opinions have nothing to do with this matter. The laws of the Church are for the government of Catholics only. In this country all are free to join whatever denomination they choose, and to serve and to bind ourselves in voluntary religious association for promoting our salvation just as we please. No man or court has a right to declare that this judicial authority and discretion, vested voluntarily in the Bishop by common consent of the

whole Catholic world, is an extraordinary or an illegal power. The experience of ages has confirmed the wisdom of the universal Catholic Church on this point. No one outside of the Church being bound by this law, has a right to challenge its authority. But in addition to the Constitutional immunity, why has this court no power or right to interfere in the question of internal management of the Church. I answer, because its membership and association is voluntary. If I do not like the Church and desire my freedom from its rules I can leave it. No one can prevent me. If Father Sheehan did not like the Church, he was free by the civil law to sever his connection with it as a member or a priest at any time. He would not be the first to exercise that right in this country or Europe. And if anybody attempted to prevent his departure—if Bishop Tuigg had interfered to prevent it—the civil courts could very soon and very properly on his application exercise jurisdiction to enjoin the Bishop; because that would be an interference with Father Sheehan's civil rights, guaranteed him by the same laws invoked by him in this case. A person, therefore, when he voluntarily joins any beneficial organization, and accepts an office in it, an Odd Fellows or Masonic organization, or a religious society, thereby agrees to submit to be bound by its rules and regulations, and no remedy for the enforcement of these rules their infraction, is to be had by applying to the civil court, and there, asking that the actions of officers, invested with discretionary power, be examined and reviewed by a civil court as to the exercise of their lawful discretion; and that after a review of the duties of the same, the officers be instructed from the bench of the civil court as to their rights and duties as members and officers of a society, and the discipline of their association, such a course is unheard of, for the reason stated, that the party on joining said association makes the tribunals of said voluntary association his court. When one voluntarily enters such a society, the society by his consent determines his rights and duties, and the question of his wrong, and until that action is taken the civil court has no jurisdiction, for he is under no ties legally as a citizen to remain in such an association. Upon this point my admiration was recently awakened by a powerful argument of my learned friend, Mr. Marshall. I refer to the case of the Rev. Nevin Woodside, of this city, in the controversy with the Oak Alley Presbyterian Church. In that case, Mr. Marshall demonstrated the supremacy of the ecclesiastical court

over the civil courts, and maintained that the jurisdiction of and authority of the judicatory of that church, in deciding Mr. Woodside's status was binding on the civil courts, and that the exercise of discretion by church courts could not be investigated by civil courts; and when his Honor, Judge Stowe, in the final disposition of that case came to examine into the question of the power of the civil court, he decided that the decision of the highest judicatory of the Presbyterian Church in that case as to Mr. Woodside's membership and right to preach in the church, to which he was called, was binding and conclusive upon him as a civil judge sitting upon that case, and Mr. Woodside was enjoined from preaching in the pulpit of the church, because its highest courts had decided against his right. This decision of Judge Stowe conformed to the uniform doctrine in this State that on questions of doctrine, discipline, qualifications and memberships, each church is left free to speak for itself.

Now, applying the principle ruled in that decision to this case, and we find that the Judge and court having jurisdiction, Bishop Tuigg, decided against Father Sheehan's right to preach, and why should not the civil court follow that judgment. Who denies that Bishop Tuigg was not legally and canonically appointed and qualified as Bishop of the Diocese of Pittsburgh at date of deciding to refuse an appointment to plaintiff? Is it denied here that the Bishop has not the jurisdiction and canonical power to sit in judgment upon an applicant for a canonical office, or his right to support as a worthy priest? Is it denied here that it is within a Bishop's official discretion to appoint or not to appoint an applicant for a mission? No testimony to contradict defendant's evidence and the canon law on these points was introduced by plaintiff. What was plaintiff's testimony on this point? Not that the Bishop had not discretionary power to pass upon the qualifications of an applicant for a mission, an appointment. This was admitted unqualifiedly. But he alleges that the refusal of the Bishop to appoint plaintiff is a punishment for a criminal offence, and that he has no right to sentence a man and condemn him ecclesiastically without a trial and conviction by a church court. Who says in this case—who claims here that the question of any sentence of Bishop Tuigg is involved, or that any sentence of perpetual refusal to appoint to an office was threatened? Who insists that a Bishop cannot refuse to

appoint a priest because of just doubts that he was not qualified at the time of application for the office? Who claims that there is any evidence that the Bishop was seeking or threatening the exercise of any criminal punishment on Father Sheehan? The evidence discloses no such intention of this kind on the part of the Bishop. It was quite the reverse, for the Bishop with full knowledge of all Father Sheehan's conduct proposed condoning his faults, and the only question was as to the expediency of entrusting Father Sheehan with an office.

Under the evidence of facts in the case, it will be apparent that Father Sheehan had been guilty of indiscretions, which were well known to the new Bishop by reason of his close intimacy with the councils of Bishop Domenec, and that Father Sheehan well knew this fact when applying to Bishop Tuigg for a mission.

When the application was made in this case, according to the plaintiff's own testimony, Bishop Tuigg had the full discretion, and in the exercise of his lawful authority, to act as he did, and that he doubted conscientiously whether Father Sheehan had entirely recovered sufficiently from his weakness to be appointed, and therefore instead of entirely rejecting him or casting him out on the world, he proposed placing him in a probationary retreat to enable him to qualify himself again for a holy office. There was no question of punishing, or trying, or sentencing him at all. The only subject Bishop Tuigg had in his mind, and certainly he had the power, was to insist that plaintiff should properly qualify himself spiritually for the exercise of the sacerdotal faculties. How was that to be done? It is the uniform practice in the Catholic Church that when it becomes necessary by the weakness of any of her priests—for human beings are weak and often need assistance—to require the unfortunate persons to retire to a life of prayer and spiritual retreat. The Bishop so exercised his power on plaintiff, and his first act was not to cut him off from the Church—not to drive him out on the cold charity of the world, not to expose him to public scandal by a trial, but by a merciful and charitable use of his discretion, lawfully vested in him, he requested him to retire to some institution where they have a rule of prayer, and holy exercises daily, and where he would be debarred from the temptations that are so liable to assail a man in the outer world. In such a place, where he would be given religious companions, reading, and, by a season of prayer and fasting, being

cut off from worldly associations, and strengthened by the grace of God, the Bishop hoped plaintiff, in the course of time, would regain his lost qualifications and be able to take charge of a mission. Such practically was the advice of Bishop Tuigg towards this unfortunate man. And such was his intention, as disclosed by all the evidence. It was his duty as a Bishop to act as he did, and he could not have done more for his benefit. There was no question of degrading Father Sheehan or punishing him for the past. It was not a question of a criminal trial, and no evidence has been introduced to show that at the time plaintiff ever so regarded it. Neither can the case be by means of wrong constructions of precedents or canons of the Church be held to bring it within the category of a criminal case. No one—certainly not the Bishop—was preferring charges against this man. The Bishop, on the occasions of the refusals to appoint was preferring no charges against Father Sheehan. He does not here to-day do so, or brand him as a criminal. Neither does the Bishop say: "You are not of the Catholic Church nor of our diocese;" but he takes the stand, as he did from the first, that when a priest applies for appointment and is expected to set himself up as an example to laymen, and to preach the holy gospel and administer the ordinances of the Roman Catholic Church, and to himself observe them, he shall be prepared, and not leave it to chance uncertainty or even open to doubts. He must be prepared to fully prove his fitness if required. The Bishop may know an applicant's intentions are good. He may believe that the spirit is willing but the flesh is weak, and circumstanced as a Bishop, with its tremendous responsibilities, he should require some proof of fitness before exercising jurisdiction in favor of an applicant.

Now, take, your Honor, this view of the case: Had the plaintiff come directly to Pittsburgh from Rome in obedience to the command of the Propaganda, contained in the letter in evidence, and had he applied for appointment to an office immediately on his return, I doubt if this case would ever have been instituted. Because the testimony shows that he obeyed the Sacred Congregation in Rome, and was purified by a spiritual retreat in Rome. He had made a retreat in a monastery there. The Bishop was informed of his obedience and retreat, and the hope was expressed in the letters that the spiritual retreat had been beneficial in its results. But how long was it before he arrived here? Did he not disobey the command of the Propa-

ganda in failing to report to the Bishop for nearly a year after his return to the United States. Is this not proof of relapsed weakness—a proof of falling into the bad habits suggested by the letters of the Sacred Congregation—a loitering on the highways and byways, and failing to report to Bishop Tuigg as his lawful superior for several months after his arrival in this country? He was not sick then. He does not claim that he was in ill health when he arrived in New York; or when he visited his mother in Virginia. Where did he tarry on the way, and why did he not report as directed by the Propaganda? There is no assertion of ill health in the testimony. He was in perfect bodily health, and no excuse whatever is tendered the Bishop for his refusal to return immediately to the diocese when commanded by Rome. What other than an unfavorable construction could be placed upon the long and unauthorized absence of plaintiff from the diocese on returning from Rome? This disobeying the Holy See which by the Propaganda commanded his return to his Bishop. It is a principle that runs through all law, that where, by the law of the land, a discretionary power is vested in one man or a set of men by a corporation, municipal or otherwise, or by a church, no civil court will review that discretion if that power is lawfully vested in him or those exercising the power. The counsel for plaintiff will not deny the correctness of that position here to-day. Will plaintiff, therefore, not be obliged to establish here affirmatively that Bishop Tuigg was acting beyond the power of the discretion lodged in him when he insisted upon the plaintiff serving a probation, for the purpose of acquiring the supernatural strength for the exercise of the sacred duties of the office to which he aspired?

What is the plaintiff's position here to-day? Father Sheehan stands here not claiming or proving that he was qualified, or that he had prepared himself spiritually for a mission. He stands mute before his Bishop, and relies for success upon a presumption and maxim applicable only to criminal causes in the criminal courts of the land, and he stands here before this court, as before Bishop Tuigg, demanding an appointment to office, claiming the benefit of the maxim: "Everybody is supposed innocent until proven guilty." He says to the Bishop, in effect: "You had no right to take cognizance of what you knew while you were in Bishop Domenec's council. You knew that for six months before your appointment as Bishop I was not living the life of an ecclesiastic at all; but you had no

right to take that fact into consideration when you became Bishop. I come before you in your capacity as a new Bishop ; privately you may know that I am an immoral and incompetent man ; officially, you must close your eyes to these facts and appoint me pastor." Why did he not bring this suit against the Rev. Father Hickey, who, by his testimony, promised him a mission ? Why did he not bring it against Bishop Domenec or his administrator, whom he says "granted him leave of absence, and promised him missions more than once on his return ?" Why is it that he made no complaint to Rome of their direct and absolute refusal to qualify him or to appoint him to office or support him ? Especially after their repeated promises. Let us see what action the new Bishop took in his case : "Retire, in the name of God, to a monastery," he says ; "qualify yourself for an office, and I will give you a chance."

Such was the advice given him by Bishop Tuigg. Is there any testimony here that Bishop Domenec, good, kind and saintly man that he was, ever said as much to Father Sheehan, or "I have confidence in you, retire to a monastery and I will give you a trial." What did Father Hickey, his bosom friend, say, "my hands are tied, I can do nothing for you. I cannot recognize you." Bishop Domenec was in the city for eight or ten days after Father Sheehan's return from his cruise around the country, yet he made no application to him in person. Why not ? Ten days was ample time. With the duplicate letters he claims he had upon his person granting him leave of absence, and showing, as he claims, that the leave had been renewed from time to time and that he was a man in good standing, why did he hesitate to apply ? Why had he to ask Father Hickey or Father Wall to intercede for him ? Why was he denied recognition as in good standing by Bishop Domenec and Father Hickey, and why was he denied by them bed and board at the Episcopal Residence—never denied even priests, entire strangers, while in the city ? He says during this period he didn't live with ecclesiastics ; that during this period he didn't lead the life of an ecclesiastic. Where did he live, and with whom ? That he had been away from church associations and never celebrated mass once anywhere during those six months. Well, if his story be true, if he was temporarily out of a mission, and waiting for an appointment, he would still have had the right to board in the Episcopal Residence, according to his own testimony the Bishop being bound for his support. But

he testifies that he never got that humble favor from Father Hickey or Bishop Domenec. These facts prove conclusively, that the status of Father Sheehan at that time was not that of a priest in good standing, and that Bishop Domenec and Father Hickey then so regarded and treated him. It may be true that no formal charges had been preferred against him then, but if he abandoned his office that would not be necessary. He claimed no right or support then. We say, however, that it was his duty by the proven canons of the Church to exhibit to the Bishop affirmatively credentials of character and qualifications for the office he sought, after ignoring all ecclesiastical authority and life for so long a time, and after his abandonment so long of the diocese and his Bishop. His denial of the jurisdiction by the Bishop in refusing to submit and obey him, by leading the life of an ecclesiastic and in failing to say mass, and in failing to enter any church, and neglect to report by letter or in person on his return from Rome. Let me say that on that very question of returning here in good standing during Bishop Domenec's administration, and temporarily lodging here for a few days until he could get a mission, by all the evidence on canon law offered, he certainly would have had a right to enter St. Paul's Cathedral and say mass, preach the gospel or administer any sacrament of the Church; but Bishop Domenec and Father Hickey then, for reasons satisfactory to themselves, as has been testified, denied him all power, and he never exercised it. The reason is apparent why he did not exercise any of the functions of the priesthood at this time. Had they been given to him by Bishop Domenec he would have used the privilege.

Now I approach a phase of this case with regret, because I am obliged to question the veracity of a man once invested with the highest honors of the Catholic Church, but from his associations, vicissitudes and habits for years, many ideas and statements are made by him, which, in charity, I can and do dispute, without imputing deliberate falsehood to him. Regard for truth, and the memory of Bishop Domenec obliges me to take issue with his statement that he ever had a leave of absence at all from the diocese. I believe he abandoned the diocese. According to the testimony here, he left Cameron's Bottom without a particle of leave from the Bishop, or without notice to him. How long was his congregation without a pastor, how long he had been sick, or what caused his

paralysis, what part of his body was paralyzed? There are different kinds of paralysis. Was his mental or bodily. How long had he the rheumatism? In the Mercy Hospital many kinds of paralysis and rheumatism are treated; what doctor attended him while there? All this is shrouded in mystery, and by his own testimony his paralysis was of very short duration, and was certainly grossly exaggerated. The absence of corroborative proof of his singular story, so susceptible, if true, of corroboration, is a circumstance to which I ask your Honor to give due weight and special attention as very significant. He says he visited Mercy Hospital, in this city; that he went there for treatment and the doctor attended to him. Does he give the doctor's name or how long he lay sick? Does he say whether it was a serious ailment or a trivial one, or whether it was aggravated by his habits? Nothing of the kind. On all this he could give particulars, but he withholds information. Is the story of his paralysis consistent with his story when he states that he had not been long in the city from Cameron's Bottom until he commenced to exercise the clerical functions generally around the city? He says he performed clerical functions in the city by leave of Father Hickey because he had resigned. He does not say he resigned because of ill health. Now, your Honor, if he was able to discharge the clerical functions around the city, if his health had been restored, and he could exercise these functions around the city, why did he resign? If this paralysis that he talks of was existing then, where is it now or since? He presents no sign of it in this court, where he has appeared, during this long trial, unusually active. No medical testimony has been produced that he ever has had paralysis in any form. How and why did he resign and leave his mission? According to his own statement he was immediately afterwards able to perform the highest functions of the ministry in every diocese of the United States, and in all seasons and climates.

Follow his narrative, which he says is only partially given or remembered by him; the stories of his travels and adventures carries with it a complete refutation of his preserving either his good standing or qualifications. "Officiating," he deliberately states on the witness stand, with or without the permission of Bishops to whom he applied on visits to their dioceses. He travels from place to place, New York, Buffalo, and the refreshing breezes of Lake Superior are visited by him in the summer, and after traveling all over

the country, like a circus, he winters in the South. Read this testimony of his travels and you will be convinced of the truth of what I say about the folly of his story about ill health and leave of absence. Why did he not return to his mission and serve in the diocese where he claims support. He claims citizenship and acknowledges allegiance to the Diocese of Pittsburgh and demands support from it on these grounds. Why, then, did he spend four years in other fields, working uninvited for other Bishops here and there. What was he doing for his own Bishop and diocese at this period? You have his testimony before you and a close scrutiny will show that he by his own conduct regarded himself as a wandering priest, who had abandoned his diocese. In effect he now appears and says, "I turned my back upon my diocese to which I owed service and residence, when I was young and able to work, subjecting myself to the jurisdiction of no Bishop, and bound by no rules. I went to New Orleans, to Arkansas, elsewhere, and enjoyed what is called a good time, and wandered wherever my own sweet will listed, but now in my old age, when I am unable to work, I will come back again to the fields of my youth and claim to be a priest of the diocese I abandoned, though the prospects are that by my age, life and travels, I will not be able to discharge the duties of the ministry; but the diocese deprived of my services for ten full years must support me." Is this honest or just? I say his departure from Cameron's Bottom was an absolute abandonment of his office under the laws of the Church. I question the veracity of his testimony, about his indefinite leave of absence and missing letters from a Bishop now dead, all of which is not corroborated in the main facts. It is very easy, now that Bishop Domenec sleeps in his grave in far distant Spain, to say that he wrote him two letters and repented of his treatment of him. Why did the plaintiff not preserve these letters? Why did he not keep copies of them and of his original leave of absence? These should be prized by him under the peculiar circumstances of his case as most precious, as his character, his standing—his whole future depended upon them?

Why did he not in the lifetime of Bishop Domenec, when he claims he had interviews with him, after the division of the diocese and plaintiff's troubles had commenced, say: "Bishop Domenec, I am likely to get into trouble with Bishop Tuigg. He claims that I am a foreigner to his diocese, and that I am not in good standing

by reason of my protracted leave of absence under you. Will you be kind enough, Bishop, to give me a duplicate of those letters you sent me, and which I have lost, so that I can substantiate my standing to Bishop Tuigg?" Does any man who was honored with the acquaintance of Bishop Domenec, and who knew his just, generous and kind heart, doubt that if plaintiff tells the truth that he would have hesitated a moment to furnish certificates that Patrick M. Sheehan had been away on account of sickness and by his authority, and that he was well qualified to perform the functions of a priest? And would Bishop Domenec himself not have permitted Father Sheehan to say Mass and to have exercised the functions of the ministry in his new diocese? Would he have refused him the support he claims here he never lost? What was the action of Bishop Domenec? It was exactly the reverse of this. He did not permit him even to celebrate Mass once in his cathedral in Allegheny. He did not permit him to exercise any faculties in the diocese of Allegheny. If Father Sheehan were not qualified then, as I claim he was not, Bishop Domenec did right, and I believe the saintly Bishop would do no wrong to any one. If disqualified then, when was it removed, and by whom? And, therefore, I say his action in refusing to permit Father Sheehan to exercise any of the functions of the ministry in Allegheny Diocese shows that when he presented himself to him he had no claims whatever for either salary or support in either diocese. I do not believe that Bishop Domenec ever wrote the duplicate letters of which Father Sheehan speaks, or Father Sheehan would have produced them here, or would have been able to account for where or when he lost them.

Judging his story and his actions together, we can pass upon the probabilities of the truth of his testimony. But for the sake of argument—conceding what we do not, that the interviews with Bishop Domenec and the letters are all true—would not the very first thing that Father Sheehan would naturally say in applying to Bishop Tuigg: "You question my right to appointment and support and my standing; you desire me to retire to a monastery. Why need I do so? Bishop Domenec has repeatedly given me letters of character. Here is a correct certificate from Rev. Father Hickey, showing why I have resigned. Here is the documentary evidence." Does Father Sheehan claim that he ever communicated, by the slightest whisper, the existence of any such authority

or letters in any of his interviews with Bishop Tuigg? No, sir; he does not. If true, why did he not assert these facts at the time? On this the law says they who are silent when they should speak must remain silent afterwards when they would speak. Such a course of action works in law an estoppel from denying a certain state of facts. He makes no claim that he ever said anything of that kind to Bishop Tuigg at any time. And the first intimation the Bishop received of such a claim was when he took the witness stand in court and asserted that he had leave of absence and that he had resigned. I know it may be said that in this he is partially corroborated by Father Hickey's testimony as to the indefinite leave of absence and resignation. But Father Hickey's testimony will be found to be not of the most emphatic and positive kind. It is far from clear and certain. Considerable of it is negative in its character, such as that he could not remember certain dates or facts, and the very remarkable statement that he was not aware of Father Sheehan's being under any disability. Besides, Father Hickey testified that he has a very poor memory. Now it may well have been that Father Hickey did not know of all the frailties of Father Sheehan, or the Bishop's decision or action in his case, for a Bishop carries many secrets in his own mind regarding his clergy, and because they were lodged in the mind of Bishop Domenec in this case may be the very reason of Father Hickey's ignorance on the subject, and it may be from an unwillingness, on Father Hickey's part, without positive recollection, to disparage Father Sheehan. If Father Hickey was as true a friend as Father Sheehan claims, and Bishop Domenec never communicated to him an order or instruction about Father Sheehan's conduct and how to treat him, why, when under the testimony, Father Hickey had full authority, did he not himself appoint Father Sheehan to some position, or at least permit him bed and board at the Bishop's as a priest in good standing. No satisfactory explanation is given on this point by either Fathers Hickey or Sheehan. Bishop Domenec must certainly have left a discretion with Father Hickey to appoint or support him if he had confidence in Father Sheehan's reformation; confidence that he had overcome this weakness, so well known to the Bishop, and had sufficient strength of mind and body to resist these temptations. But Father Hickey, we are bound to believe, as administrator of the diocese, acted conscientiously at the

time with his memory fresh on Father Sheehan's history. Bishop Domenec acting upon his conscience also refused to say so, or to direct Father Hickey to appoint or support plaintiff, or to give any expression of confidence in his reform. The plaintiff now comes into court here, and asks Bishop Tuigg to say so, and reverse the decisions of Bishop Domenec and Father Hickey in his case without proofs or new evidence, and to express his confidence in plaintiff's reform by appointing him to an office, on his own mere demand, accompanied with an absolute refusal to heed the paternal admonition of the Bishop.

Now, conceding that the Court has jurisdiction to review the action and discretion of the Bishop in this case, and to pass upon the question whether the Bishop had authority to insist upon a probationary period, waiving all question of that as well as the form of this action, I call your attention for a moment or two to this further question presented by this case. Whether according to the laws of the land—and particularly to the laws laid down in this State—a priest, a member of a church, is not obliged to exhaust all remedies, if he had any, in the tribunals of his own church before invoking the civil law courts for redress? That, of course, brings us to the question and consideration of the testimony bearing upon the plaintiff, as to whether he had any proper or adequate remedy for his alleged wrongful deprivation of office and salary in the forum of the Catholic Church. And here I desire to call special attention to a striking peculiarity on this very subject of remedies in the Roman Catholic denomination, different from any other religious organization that I have investigated, which is, that the Catholic Church alone, of all denominations, affords for ecclesiastical wrongs involving loss or damages a pecuniary indemnity. I am not aware of any other denomination, Presbyterian, Methodist, Episcopal or Jewish, which affords financial remedies. They all right ecclesiastical wrongs by a spiritual remedy solely.

The tribunal, synod or a body delegated by all other denominations to pass upon such controversies, never take cognizance of any money question involved, or afforded any temporal relief for injuries. They merely decide the canonical or the ecclesiastical question involved, as, for example, the simple right to an office, leaving contestants no remedy in the Church for loss of office or salary. You will observe, however, that all the Catholic canonists are unani-

mous in agreeing that for damages or injuries, for loss of character or loss of emoluments of an office by her members, the tribunals of the Catholic Church do afford as complete and adequate relief for all pecuniary loss or injuries sustained as perhaps any civil court could afford. In other words, her courts undertake to adjudicate upon financial questions and financial wrongs of all kinds, sustained by her officers or members through Church rulings or actions; the relief is as broad and extensive as the injury sought to be repaired.

Admitting that to be so, is it not an additional reason why the court should withhold its jurisdiction in this case? The money question involved in this case seemed to strike your Honor as giving you jurisdiction to pass upon and determine this case. We show that by universal consent of the whole Catholic world, by consent of this plaintiff, the Catholic Church has always exercised jurisdiction over matters of that kind, and has a remedy for wrongs involving money losses or claims. Father Sheehan, knowing all this at his ordination, should submit his claim for salary to the ecclesiastical forum, and this court should refuse to hear his case until he shows that his Church affords no remedy. Now, under this state of facts, seeing that the Methodist, Episcopal, Jewish or other Church denominations do not pass upon grievances involving pecuniary indemnity, I could well see how your Honor could assume jurisdiction in cases arising within these denominations for money or salary claims. Your Honor could take the view: that while from the settled rules of the Methodist Church, from the settled policy of the Episcopal Church, and from the settled discipline of the Jewish Church, relief for grievances or wrongs entailing loss of salary or other injuries, are incomplete in this: such denominations grant only spiritual remedies, and deny their members any temporal remedy; therefore, in cases of such denominations a civil court might for this reason be bound to assume jurisdiction; but not so when a religious body such as the Catholic Church undertakes to right temporal injuries in her ecclesiastical courts as well as spiritual, and awards temporal damages for injuries, as well as spiritual reparation, to the person aggrieved. The argument that would, therefore, apply to justify the entertainment of jurisdiction by a civil court because of affording only spiritual relief for financial losses, in other bodies, would have no application to the case of injuries of

any kind in the Catholic Church. Its courts and tribunals, as was admitted by plaintiff's expert witness, take full cognizance of everything directly or indirectly connected with the alleged grievance, and that the remedy is just as broad and comprehensive as the civil courts could afford, in case they assumed jurisdiction, is conceded under the testimony of all the experts on canon law on both sides in this case. That if Father Sheehan was in the right in this very case, and if Bishop Tuigg, in the exercise of the power of his office, abused his authority, and through malice, neglect or mistake, denied Father Sheehan an appointment or support, contrary to the canon law of the Church, the Church has full power to take cognizance of and hear all the subject matter, and will assume jurisdiction on the complaint of the party aggrieved, pass upon every question, collateral and direct, connected with the dispute. The ecclesiastical court could decide, in the first place, that the Bishop had exceeded his power under the canon law; in the next place, that Father Sheehan, having been unjustly and uncanonically deprived of his right to an office and emoluments for three years, the Bishop must fully indemnify him, and pay all damages in this case, being the three years' salary claimed. All the canonists agree to this absolute provision within the Church for pecuniary relief.

For the enforcement of those remedies in the Church, the testimony and authorities submitted show as complete provisions as that of any existing civil tribunal in the land. A mandamus is known in the ecclesiastical courts, but perhaps not by that technical name. The order to a Bishop, directing a clerical act to be done, comes down from the superior, the Archbishop, or it may be from the Supreme Court of the Church in Rome, directing obedience on the part of the Bishop to the mandate: "Pay the man the money, restore him to the office from which you unjustly removed him, and restore him to his lost place of honor. Pay him the salary you have unjustly deprived him from earning. You have unjustly deprived this man of his character; restore that. We direct that you make full reparation." The Bishop is required by his canonical oath to obey such a mandate, and the penalty for disobedience is degradation from his office. And furthermore, in case of one Bishop refusing to obey such a mandate or order, and his degradation for refusal, such an order is binding on his successor, who is pledged to

obey it, and afford full temporal and spiritual reparation to the injured Priest or layman.

We therefore maintain that from the nature and the peculiarity of the case at bar, where it is claimed a temporary injury by the loss of clerical salary, or where the enforcement of any ecclesiastical contract is sought, the fact that the Church law of the particular ecclesiastical denomination takes full cognizance of the whole subject matter, and a complete remedy is afforded in the church courts, presents an additional reason why this court should assume the position that as a civil court it has no jurisdiction over the subject matter of this case or the parties. In other words, we assert, that in such a case there cannot be concurrent jurisdiction between a civil and an ecclesiastical court—either one must be exclusive. We further take the stand that before any jurisdiction can be lawfully exercised in an ecclesiastical controversy, by a civil court, the aggrieved party must first exhaust the remedies afforded, if any exist, in his own denomination. Such, I take, is the well settled law of Pennsylvania in Church cases. A debatable point is raised by plaintiff's testimony whether an appeal or relief of any kind, is afforded him for his grievance within the Church. Is that true? Let us examine the testimony and the law and ascertain if this remarkable statement of no relief for flagrant wrongs exists in the Catholic Church be true. If I understand Father Sheehan and his witnesses correctly, they are all agreed on the statement that no appeal, strictly so called, lies in the tribunals of the Church, unless after an adjudication by a trial and a judicial sentence has been pronounced by the Bishop. Under this heading of a sentence he embraces every form of rulings, decrees, decisions, directions and discipline of the Church duly made by the Bishop, and he says because one's rights in the Church may be affected by such judicial rulings, decrees, &c., without the formality of a Church trial and sentence, such rights cannot otherwise be infringed. Let us take the civil courts for instance. By the Constitution and laws of the land all citizens are guaranteed protection in their rights and property, and especially the right of trial by jury, before being deprived of property; yet there are many questions involving the rights of property and interests of the people, that are excluded from trial by jury, and the determination of them vested solely in the discretion of the Court. By this discretionary power many questions and rights of prop-

erty are often decided without trial by jury. The civil court will decide in regard to exceptions to a sheriff's sale, of real or personal property, matters involving the right of a citizen to property. On exceptions, involving often a large amount of money property, to administrator's accounts the Orphans Court will exercise jurisdiction and pass upon questions of property rights, without the trial by jury which is guaranteed every citizen in ordinary cases. Although the right to such a trial is by the Constitution allowed in all cases and citizens cannot be deprived of it, yet the laws of the land in regard to many such rights have without trial by jury been vested in the discretion of the civil courts. So in the ecclesiastical courts. Where there is a question in regard to the rights and qualifications of a member and his standing, and where his moral character is assailed and a serious crime is charged, all canonists agree a trial and sentence is necessary before an appeal will lie. But that applies solely to criminal cases in ecclesiastical law. Here I beg leave to state that a criminal charge in the ecclesiastical law, as well as in the courts of the land, means some very serious charge affecting the morality of a man. It is no trivial matter or fault. In the laws of the State as well as of the Church there are codes in which crimes and misdemeanors are distinguished and defined. Now, take this case: From our view of it, we do not assert that any crime, any actual crime, was implied against Father Sheehan at the time of his application, and certainly none was charged; but we do say that under the evidence it has been shown that he came before the Bishop, admitting that he abandoned the diocese and had been out of office for years, that he had been off the mission since 1871, and had been commanded to make a spiritual retreat away from his own diocese; that the only accounts he referred the Bishop to for his absence in Rome were letters from Rome, which indicated that he was prone to a certain vice. The word vice means a fixed habit, not a mere accidental act. The Bishop did not propose to try him or sentence him. In fact he made no accusation whatever against Father Sheehan. He hoped, indeed, that he had recovered from the vice to which he was so much prone. But under the circumstances of Bishop Domenec and Father Hickey keeping him out of office and failing to trust him, and because of loitering so long on the way home from Rome and failing to report to the Bishop, he had

honest doubts, from his past experience and the many trials that had been given him before, the many situations he had held under Bishop Domenec and his aimless wanderings over the country, North and South, whether his reformation was so complete and lasting that he could again be entrusted with the highest honors and duties of the Church in administering to the spiritual wants of a congregation as a pastor. Now the rules applying to a case involving the exercise of so great a responsibility on the part of the Bishop, as passing upon the spiritual qualifications of an applicant for an appointment, are certainly different from those which would be applied to a criminal on trial or one accused on criminal charges.

In the case before us, whatever offence, whatever misdemeanor, whatever indiscretion Father Sheehan was guilty of at any time, Father Sheehan was denying nothing, and the Bishop did not propose to take cognizance of and try it. Father Sheehan asked for no trial or investigation; he asked simply for an office, and the Bishop refused him because of doubts, honest, conscientious doubts, as to whether he could be trusted again to serve the Church in a desirable and satisfactory manner. We say, your Honor, sentence and punishment presuppose a crime; but it is not a penalty, it is not punishment, to be required to retreat to a house of prayer for further qualification for an office. We have the testimony of Father Sheehan that while in Rome he voluntarily obeyed the Cardinals and retired to the Passionist Monastery and made a spiritual retreat to gain spiritual strength, and that he did so voluntarily at Baltimore and Carrollton after his return from Rome. Why did he emphatically refuse to do so for Bishop Tuigg on the occasion of his first application? He complied with the directions in Rome for a retreat, but declined the same admonition of his Bishop. Laymen and clerics become spiritually negligent, and it is only proper, and the Church very frequently prescribes repair to a house or monastery of religious retreat, where in retirement and solitude they can reflect and pray and make good resolutions, and prepare themselves to overcome the temptations to which they are liable in the busy outside world. It is admitted that this is not a punishment. There is nothing degrading in this, neither was it proposed by the Bishop for that object. Such directions were given as a qualifying matter. Now, the case of Father Sheehan, I submit, may reasonably be said to require just such action on the part of the Bishop. When he applied for a

mission to Bishop Tuigg, what is more likely than that the Bishop should say to him "You have been so long away from your books and ecclesiastical duties that you are behind in your studies and have forgotten the rubrics of the Church. You have grown rusty in all the duties of the priesthood, therefore we cannot trust you to go upon the altar to properly expound the gospel and teach the catechism to the children. We know nothing about your life and conduct while you have been away, and you bring no credentials, and accordingly, we think under all the circumstances you should retire to some monastery for awhile, where you will be associated with ecclesiastics and your mind constantly kept on the sacred duties of the priesthood. You admit that you have not been leading or living the life of an ecclesiastic or exercising any of the functions of the ministry for years, and therefore we wish you to retire for one year, to be spent in prayer and in holy thoughts, and so you will read on religious subjects and sermons and qualify yourself to discharge the duties of the sacred office." This was the meaning of Bishop Tuigg, and no other, can fairly be drawn from the language used by him in his testimony in this case. What did the Bishop say? Did he accuse Father Sheehan at any time of being a criminal? No; on the contrary, full of parental care for the weak, unfortunate applicant, he says to him, "You have been so long away, beyond the supervision of the Bishop, and, as you know, things get out of order, by your long absence, you will have to retire for awhile and qualify yourself and then return to me." Is that the language of a harsh accuser? Are these the words of a judge about instituting trial or imposing a harsh sentence? Is it not more like the language of a father to an erring child? Is it more than the fondest parent might do in mercifully and charitably reprimanding his own child, which relation Bishop Tuigg felt he sustained towards Father Sheehan.

Turning now to the subject of extra judicial appeals and their recognition by the Church as well defined remedies, I recur again to the analogy of the civil judges and courts for illustration, in such cases, for examples, as the dismissal of exceptions to a Sheriff's sale, and of an exception filed to an administrator's account, where discretion has been vested in courts without juries. It might be said in such cases, just as well as in this, that unless there was a jury trial there could be no system of reviewing the errors or mistakes of a court,

because of their being no jury trial and verdict. There being a provision for a constitutional jury trial, there could be no legal judgment and no condemnation of the property and rights of a citizen without such action; yet such matters where no jury trials have been had before a court can be reviewed in various ways, for example, by a bill of review, a certiorari, a mandamus, and many other ways of relief are provided in law for the aggrieved persons on account of mistakes of courts where no trial by jury is had; and just as well as if a verdict by jury had been rendered, and a judgment thereon been pronounced by the judge. Now, I take it that the law is too well settled for controversy about the position; that, it being established that adequate and proper tribunals exist in the Church for the relief of ecclesiastical grievances, or supposed grievances, Church members and officers are bound to first invoke Church powers and Church remedies to secure their rights in the Church, before entering a civil court; and that it is only where a plaintiff claims and proves that the ecclesiastical courts do not give an adequate remedy, that the civil courts will listen to an appeal. I think we may say that this position is conceded. Now, has the plaintiff established that he has exhausted the remedies of his Church? Has he shown that the Church affords no remedy?

By the Court.—Does that apply where there is a money demand?

By Mr. McKenna.—Yes, sir; if there exists a relief in the Church for demands of that kind, I think that will apply.

By the Court.—Suppose the Bishop should employ a member of his Church to do some work about the Episcopal residence or Cathedral, has he a remedy in the ecclesiastical court to enforce payment; and if so, could that be invoked?

By Mr. McKenna.—No, sir, I think not. I think if Bishop Tuigg would employ me as his lawyer, I could not, as I understand it, have any action or remedy against him in the ecclesiastical court. That would be a civil contract, a contract made with me as a layman, and I could not conceive of any jurisdiction that the ecclesiastical courts would have over it, any more than if his baker or candlestick maker, or any body else, should have a contract with him. The mere fact that such a person dealing with a Bishop belonged to the denomination of the Bishop would not make him subject to the ecclesiastical courts at all, or otherwise affect the question.

By the Court.—Suppose the ecclesiastical courts did give him a remedy; suppose the Church in cases of that kind gave him a direct remedy, would that oust the jurisdiction of the civil tribunal?

By Mr. McKenna.—I think not, because it is not an ecclesiastical contract, but the contract sought to be enforced here is purely an ecclesiastical contract for ecclesiastical services as an ecclesiastical officer. Civil contracts of a Bishop are often enforced. For instance, if a Bishop executes a mortgage on Church property it may be foreclosed; or a deposit with a Bishop from a member of his Church, or the Bishop give one his note, of course the civil courts takes exclusive jurisdiction. I know of no proceedings in the canon law, and, if there is, they have not been developed in this case, in the exceedingly wide range of testimony, whereby, for example, a man having loaned a Bishop a thousand dollars and a dispute having arisen in regard to the payment thereof, the Bishop could be sued by him in the ecclesiastical court; for such a debt is not an ecclesiastical, but a civil contract. An ecclesiastical contract must be pursued in ecclesiastical court and a civil contract in a civil court, each having its own and exclusive remedies and jurisdiction. Now we claim, whatever rights Father Sheenan has in the Church, that his suit is purely an ecclesiastical matter, as the affidavit of claim and all the papers in the case show; he himself says that he holds the canonical office of priest for life, and is here suing for a canonical salary alleged to be canonically earned. He does not claim or set forth that he sues on any civil contract outside of the Church at all, and that is the reason, I say, that being a canonical contract, canonical remedies must be pursued, and I may say further that the plaintiff does not contend that he has properly pursued all the canonical remedies allowed by the canons of the Church, or that the Bishop has in this case violated the canons by denying him a hearing or refusing to enforce the laws of the Church in his favor. For if any one fact has been clearly established it is that this plaintiff never asked for a trial on the charge of being disqualified by long absence or any other cause; nor did he apply for a trial when refused by either Bishop Domenec or Bishop Tuigg. I concede that civil courts will assume jurisdiction when the ecclesiastical remedies in a certain class of Church cases have been exhausted. The history of cases in the civil courts in this country shows that courts will exercise jurisdiction in questions of

rights when they are unjustly denied by Churches and no remedy given, or the laws of the Church have been violated and wrongly administered. This doctrine is in accordance with the principles enunciated in another portion of the opinion in the Cheeney case, to which I have already referred your Honor. I read from that case: "So, where a clergyman of the Protestant Episcopal Church was charged with the offence of omitting the words 'regenerate' and 'regeneration' in the ministration of the sacrament of infant baptism, it was held that the secular courts would not inquire whether the alleged omission was an offence against the law of the Church; that was a question of ecclesiastical cognizance alone. **THE CHURCH SHOULD ENACT AND CONSTRUER ITS OWN LAWS AND ENFORCE ITS OWN DISCIPLINE WITHOUT INTERFERENCE OF THE LEGAL TRIBUNAL.**" What is the case before your Honor but one of the enforcement of Church discipline? And again in the same case the court says: "*A rector of the Protestant Episcopal Church has not such a vested right in his office—such property in the right to preach and in the salary and emolument pertaining thereto—as will authorize the civil courts to interpose upon the ground to restrain an ecclesiastical court in his trial for an alleged offence against the canon and discipline of the Church. The contract of employment for his salary must be construed and enforced by reference to canons which form a part of it. If the minister be suspended or deposed for an ecclesiastical offence his right to salary and emolument is gone.*"

These principles prevail all through the Church law decisions of our State. All we ask in this case is to remit the plaintiff to the Church Courts. To let it be free, exercise its right, as the Supreme Court here says it has the right, to enforce its own discipline on its own members and officers. Has Father Sheehan any greater right, a more vested right of property to preach and administer the sacraments of the Catholic Church than was claimed in that case for Rev. Cheeney. What court can better construe the original contract of employment of Father Sheehan in this very case and his right to a salary than an ecclesiastical court composed of priests, more familiar with the canons and usages of the Church in the construction of such a contract than any civil court, having for the first time such a question submitted to it for adjudication. As well submit to a body

of ecclesiastics a question of civil law and construction of civil contract to be adjudicated by ecclesiastical law, as to have ecclesiastical laws and contracts interpreted by civil law and civil courts.

The plaintiff while claiming on a contract does not claim it to be a civil contract. Nor does he show the establishment of the relations of a civil contract with the Bishop direct or indirect at any time. Instead of a promise he proves a direct refusal on the part of the Bishop to employ him. Plaintiff's affidavit of claim and declaration set forth and recite a canonical claim under the canons of the Church, and under the statutes of the diocese and not under the civil law. This action is to recover the salary claimed under the provisions of the law and usage of the Church as recited, under the regulation of the diocese on salary. Plaintiff appears in this court and asks for redress on a canonical matter, for which the ecclesiastical courts of his Church afford a complete remedy. Plaintiff does not pretend to assert that Bishop Tuigg officially or individually ever said, "I will pay you eight hundred dollars, Father Sheehan, if you will serve me as a priest of the Diocese of Pittsburgh." If he said that it would be a different matter, an express contract known to the civil law; but he claims that a canonical statute imposes a canonical duty, on the Bishop, to pay this man a salary of eight hundred dollars per year, and to enforce that canonical duty he can sue in a civil court. Will not the exercise of this kind of jurisdiction over canonical officials by civil courts, construing and reviewing canonical duties and enforcing their remedies, be to say the least, a very novel and extraordinary duty for the courts of the land? Is not the duty of the court in construing this diocesan statute on salary claimed by plaintiff very plain? In the course of your Honor's extensive experience on the bench, you have passed on hundreds of contracts far more difficult and not so free from ambiguity as this canonical regulation of the Pittsburgh Diocese which you have now before you, in regard to the canon law and salary claimed in this case. Does it mean a salary, work or not, qualified or disqualified, pastor or no pastor? Does it not simply mean that if a priest, a pastor, collects eight hundred dollars pew rent from the church of which he is pastor, he has by the authority of this statute of the Church a right to retain the sum of eight hundred dollars, and no more? The statute permits him to retain that much. If he retains more, it is a violation of the canon law. The liability

is expressly fixed by this statute, under which the plaintiff claims, on the congregation benefitted by the labors and services of a priest, and not on the Bishop. The plaintiff in his affidavit of claim goes further than this. He avers that though not employed, not in charge of a congregation, not working, not deemed fit by his Bishop for such work, that is the amount he is entitled to by virtue of that very statute, and the Bishop, not the congregation, must pay him. I will read the translation of the statute, and your Honor will find no language to bear any such construction as that, nor any language showing in any event a diocesan liability, or an obligation on the Bishop. It is as follows: "Considering the state of affairs, we *permit* that the stipendiary allowance of pastors be increased two hundred dollars, and that of assistants one hundred, so that pastors may receive eight hundred and assistants four hundred dollars. But if the *pew rent* be not sufficient to amount to this sum, it shall be ALLOWED TO TAKE FROM THE OFFERINGS OF THE FAITHFUL" (not from the Bishop) "as much as may be required to complete the stipendiary allowance. If, however, this allowance appears to any priest insufficient, he shall be PERMITTED to approach the ordinary and make known to him whatever just reasons there may be to increase the fixed stipend." I call your Honor's attention especially to the word "pastor" in this diocese. Father Nolan said that the word pastor meant, wherever occurring in canons or statutes, the Bishop. You see how absurd that definition is, when applied to this statute, as old as the Diocese of Pittsburgh. This statute expressly terms each priest in charge of a congregation a pastor.

Now, your Honor, practically we agree to this—because I understood Father Nolan on his cross-examination to reluctantly concede it,—that the liability for the support of the pastor is primarily on the congregation, on the faithful of each congregation availing themselves of the Priest's labors. In other words, in this case, we assume the position that legally, under no circumstances, is there any individual liability assumed by the Bishop to pay pastors a salary of eight hundred dollars. That is as much a congregational liability for services accepted, as with any other Church denomination, besides, the Catholic, and I believe it to be as enforceable against a Catholic congregation by the civil law as in the case of any other denomination. Certainly no services being rendered personally to the Bishop by such a pastor, and the command of the Church being obligatory, under

pain of grievous sin, on the faithful, the people of each congregation, to support their pastors, the Bishop could not be held liable in any event. To prevent this question ever arising of congregations being sued civilly for salaries of pastors, the Church wisely provides, that out of the revenues, pew rents, &c., which are all payable to the pastor, he shall first pay himself the salary of \$800. The statute of this diocese does not say to priests, pay the collections, pew rents, &c., over to the Bishop and he will pay your salary. It expressly provides for the contrary. The right of retention of salary is accorded every Priest.

A labored effort has been made to prove that by the law of custom, deficiencies to pastors have been made up in certain cases by Bishop Domenec by donation. The junior counsel of plaintiff, who is the author of this ingenious theory to fix by custom the liability on the Bishop, is fresh enough from Blackstone, probably, to remember the various ingredients required in civil law to establish a custom, and in canon law I judge the same essentials are required. A custom must be so long continued as to be beyond the memory of man; it must also be universal, and it must be peaceful—undisputed; must always have these requisites before recognized as a custom. Judged by these requisites of one, two, three or four acts of Bishop Domenec in donating deficits in salaries to certain pastors, does that, all within the memory of almost the youngest priest in the Diocese, prove a custom? Does such action establish a lawful custom to relieve the faithful of a congregation from liability to obey the command of the Church, "support your pastors," and cast support on the Bishop or the Diocese? The isolated cases, mentioned and relied on by the plaintiff to change the law, occurred in a period of ten or twelve years, all within Bishop Domenec's administration. Father Hickey gave an instance where Bishop Domenec once made up the deficit of salary as a pure donation, and not as a matter of contract, or of right, or in pursuance of the Diocesan statute at all. No one doubts the power of a Bishop to voluntarily do this. But plaintiff here claims it as a right, a custom. The proof here lacks all the elements of usage or a custom. The practice of the Bishop making up deficits to pastors has never been established in this Diocese; it is denied to exist as a custom; it is not as a custom universal; it is not proven to be certain or uniform. On the contrary, it is proven exceptional and uncertain; and it has not

been proved that Bishop O'Connor ever recognized the existence of such a custom or exercised it, or that Bishop Tuigg ever exercised it or recognized the existence of such a custom. The proof establishes that no such custom in the Diocese exists. In fact the proof shows the acts relied on, originating within the memory of all, and not being continued, lack all ingredients of a custom. The proofs show simply that on one or two occasions a deficit has been made up in the case of one, two or three congregations where revenues failed to supply a worthy priest; so that no argument can be based upon the liability of the Bishop to support or pay salary to an unemployed priest by any custom or usage of the Diocese, the proof of usage and custom falling so far short of what is by law indispensable establish a custom. But by the affidavit of plaintiff and the printed argument of junior counsel of plaintiff, we are brought directly to the question of salary. The Bishop has been sued here for a salary of eight hundred dollars, under the Diocesan statute, for a priest who is not a pastor of any congregation, and who rendered no services to the Diocese, to the Bishop or to any congregation, for any portion of the three years claimed; and I say that no law has been cited, and that no law, canon or civil, can be produced by plaintiff to prove that under any circumstances, absolutely short of a promise, the Bishop or Diocese is bound to pay such a priest the salary of eight hundred dollars, under the statute, as claimed.

As to the form in which this suit is brought in the civil court, it involves the consideration of the question, whether an action in civil law can be maintained, or whether a bill in equity is not the proper remedy. The form of the action raises the question of whether a legal obligation on the part of the Bishop or Diocese to pay plaintiff has been proven; for a mere moral obligation cannot be enforced in this form of an action, an action of *assumpsit*, which requires an express legal obligation to support it, based upon a promise, expressed or implied, or *quantum meruit*, where services have been rendered and accepted. No services being rendered or accepted in this case, or alleged, of course plaintiff cannot recover on the basis of this last action, on *quantum meruit*. The moral obligation exists to support a pastor or worthy priest on the faithful of the Church by virtue of the express command of the Church to the faithful to do so under pain of sin. The moral obligation exists on the Bishop to proclaim that law to the people under his charge in a Diocese, and

to exhort the faithful to obey the precept of the Church on this subject. The moral obligation existing and being enforceable by the spiritual remedies only, of the Church through the Bishop, how can it be contended in this suit that the legal obligation to support the priest is on the Bishop. How can it, by any mode of reasoning, be transferred from the people to him? The moral obligation is not on the Bishop; it is by the laws of the Church placed expressly on the people. Yet plaintiff seeks here to cast the legal obligation on the Bishop for that which he is under no obligation to do by the laws of his Church, and which by canon law is expressly cast on others.

As to the admission quoted by your Honor in the printed brief of our colleague, Judge Dunn, "that worthy, qualified priests unemployed are entitled, as a matter of absolute right, to support, but that no remedy has been by the Church provided to enforce that right." On that point Judge Dunn very properly and forcibly presented the proposition, and which I will quote, being peculiarly pertinent in this case: "Will any one undertake to say that it is in the province of the civil court to declare whether these priests are citizens, and have a distinct right to support in the Diocese. The Bishops have power to meet that, but if they fail to do their duty we will do it ourselves; we will do it for them. Would that not be a gross infliction on the rights of conscience?"

In the Empire of Germany, Bismarck has for years past been interfering with and establishing qualifications for church officials and ecclesiastics of all denominations. He has, in fact, said: Unless you permit the State to judge of the qualifications of this candidate for the priesthood in your seminaries, and your professors of theology, and to revise your books of canon law, and unless the State prescribe the course of studies for your students of theology, your seminaries shall be closed, your pastors will not get license to attend to baptizing, marrying, or even ministering to the dying. Your priest cannot preach and cannot expound the Gospel unless approved by imperial authority. We should be slow to imitate the example of tottering dynasties, or make such a retrograde movement as denying to all churches the greatest liberty in all questions of church discipline. This action is an interference with the internal regulations of the Church, and here Father Sheehan asks this court to interfere with and review the regulations of his Church. His com-

pensation he claims as a member of an ecclesiastical order—a religious order. In other words, he stands in this court not as a citizen, saying: I want my rights as a citizen. I am denied civil rights. It is not as a priest but as a citizen I want my rights. Is the right he demands here a civil or canonical right? It must be one or the other. It cannot be both. He demands of this court his ecclesiastical rights in the Church, and to apply civil remedies of the court to that Church to compel the payment of a salary which that Church says by its laws he is not entitled to receive.

Suppose we proceed a little further and see where, exercising jurisdiction in this case, this will lead us. Can it be contended for a moment, that because Bishop Tuigg refused to pay him the salary claimed, or rather to appoint him to this office of pastor, that this court could enforce a *mandamus* on the Bishop, to thus stretch out the strong arm of the civil law under this great writ and put him into the office of pastor despite the canons of the Church? If the civil court has the right to decree and enforce the canonical obligation of the faithful to support their pastor, as part of the power to redress plaintiff's wrong in being refused the office, the civil court should certainly exercise its whole power of granting relief to plaintiff, and by *mandamus* on the Bishop compel plaintiff's appointment to a pastorship by the Bishop. Is this court to allow a priest a salary without the office?

By the Court.—The Bishop has the right to give him an appointment, and the court will not interfere with that.

By Mr. McKenna.—Well, if this court distributes to plaintiff the \$2,400 of the money of the church claimed by plaintiff, does it not necessarily pass upon his qualifications, and reverse the decision of the Bishop who rejected his application for want of proof of qualification?

By the Court.—If he is entitled to support he must have some remedy.

By Mr. McKenna.—He has full remedies, we assert, in the church.

By the Court.—Judge Dunn, in his brief, says that he has not.

By Mr. McKenna.—I think your Honor did not read the whole of Judge Dunn's answer, treating on the subject of remedies within the Church. He says on the subject of perfecting the laws of the Church: "However it may be with other denominations

the Catholic Church does not ask such aid from the State." To revise or correct her laws on this subject the Catholic Church has full remedies and tribunals without invoking the civil courts to provide remedies. Let me illustrate on this right of support and the fact that it may be lost by abandonment, and without sentence or trial. On the outskirts of this city there is a religious community known as the Economites. Its members enter the order in all seasons voluntarily. As a people they are industrious mechanics and farmers. For their time and labor the members receive nothing but their board and clothes. All property and profits are in common. Supposing now that some member of that order should come to a lawyer, as one did to me several years ago, and allege that he had left the order; that he had spent ten years working in that order and could not get a dollar from it on quitting, would a civil court allow such a claim, and decide that because he having joined that community and submitted to their regulations voluntarily he could bring a suit against the order to recover for the ten years he worked there wages on a *quantum meruit*?

By the Court.—Suppose they had refused to give him support?

By Mr. McKenna.—I am supposing the case of a retiring member. One had refused to work, had wearied in well-doing, had tired of the yoke, had struck, abandoned his work and left the plow, and went off on an excursion through the whole country, and should return to the community and demand pay, part of the profits of the concern—say "I am member of that order still; never expelled or tried or sentenced. I worked here for ten years of my life. It is true that I left in the harvest and remained away years." Would any lawyer take a suit of that nature and hope to succeed?

Just here I desire to call the attention of the court to another very important distinction that the civil law makes between the subject matter of this suit, and suits against other voluntary associations, beneficial societies. Societies other than religious societies, are well known and defined in the law of our State, incorporated and unincorporated. And as to the expulsion of members the civil law does take full cognizance of such in beneficial societies. For example, take the Odd Fellows, or relief societies and others, where members receive in cases of sickness benefits, or widows funeral expenses. Many cases of civil courts exercising jurisdiction in such kind of

societies are on our State reports. In case of such unincorporated societies other than religious, the civil courts have frequently assumed jurisdiction to restore persons to membership and benefits when they have been expelled, contrary to the by-laws or usages of such beneficial societies. But no instance is recorded where a minister of any denomination having been denied an appointment to office because deemed not qualified, the civil courts have stepped in and said: "This conference, this synod, this Bishop is wrong. The minister is qualified, and the synod or Bishop being wrong we order and direct so that the minister may earn his salary. You must stamp him with the ecclesiastical endorsement and the approbation of good standing and appoint him to a congregation and send him out as an endorsed and properly accredited agent to preach the gospel. Restore him his pulpit, enable him to earn his salary and support." In all the reports and authorities on the written brief I submitted, show that in Pennsylvania a broad line of demarcation has always existed in court rulings and decisions between beneficial and all other societies and voluntary church organizations. And it seems the reason is apparent for this distinction, owing entirely to the strict and sacred observance by the civil courts of the constitutional rights of all ecclesiastical associations to be allowed to exercise and enforce their discipline on qualifications of officers and members free from control of State Courts. No religious question but simply vested rights of members to property benefits in beneficial societies is involved in the decision of courts in cases of beneficial societies. On the subject of plaintiff's remedies for all or any grievances in this suit within the Catholic Church, the decided preponderance of testimony here shows that there does exist ample remedies within the Catholic Church for any real or fancied grievance of plaintiff. That any grievance whatever, any act of omission, or of neglect, of mistake, or of malice by the Bishop, by the unanimous testimony of four living witnesses, experts in canon law, an adequate remedy does exist in the Catholic Church. Dr. Smith, Craisson, Luerenius, Schmalzgrueber and authorities read in evidence, unqualifiedly announce the doctrine of extra judicial appeals as a form of remedy.

All recognized authorities in canon law make it very plain that by canon law it is within the province and the express jurisdiction of the Archbishop to correct, and thereby to review, any acts of neg-

lect or mistake for non-action, or using the broader term, the very words of the canon: "Any injustice of the Bishop." Conceding that to be the law, what greater injustice, under plaintiff's statement and theory, what greater denial of right, what greater wrong, would be required to confer jurisdiction upon the Archbishop under the express provisions of the canon law quoted, than what has taken place in this very case as Father Sheehan alleges? According to his testimony, if he were, when he applied to the Bishop, a qualified minister, eager, anxious and worthy to serve the altar, would it not be an outrage and an "injustice" for a Bishop to refuse such a priest the right to work, an appointment to earn his living and salary? Would such action not be within the very specified exceptions of the canon quoted by Dr. Quigley from the standard authors, where the Archbishop had express jurisdiction to hear and determine on by way of an extra judicial appeal? It is clearly embraced within the jurisdiction of the Archbishop, and yet all through the testimony the plaintiff and his expert in canon law described this case as not such an act of injustice. They assert it is a wrong not within this power of the Archbishop to review and correct by way of extra judicial appeal. They assert, to give the plaintiff a remedy by appeal or redress within the Church, it must be and is confined exclusively to cases of criminal offences. That it is only in case of a sentence, a deprivation of office, a punishment, that gives the Archbishop jurisdiction, and that by virtue of his office he has jurisdiction to entertain no other cases or grant any redress whatever. The facts do not sustain any such assertions, and every authority in canon law contradicted these opinions. The real fact admitted in this case is, that Bishop Tuigg simply refused to appoint a priest to an office, unless, upon the terms that by virtue of his office and duty he dictated, which he had a proper and lawful right to demand. The right of the Bishop to exact these conditions plaintiff denies.

All authorities in canon law conceding the existence of extra judicial remedies for extra judicial injuries in the Church, and having so proven, in point of fact, no one contradicting, that plaintiff, on being refused an appointment to office, improperly, as he claims, could have applied to the Archbishop for relief; that the Archbishop had full jurisdiction and power in just such a case by the canon law; the averment of trial and sentence made by plaintiff and Rev. Nolan,

being a pre-requisite for relief, is disproved as wholly inapplicable to this case.

Father Sheehan was bound to know the law of the Church; he was bound to know it, as well as the existence of such a remedy and the jurisdiction of the Archbishop. His ignorance of this express provision of ecclesiastical law in affording redress in his case, and the ignorance of Father Nolan, who on the witness stand stated that if there was such a remedy he knew of no such law, would not excuse him in the civil or Church law from pursuing his remedy to the end, within the Church, when before the civil court the existence of such a remedy was overwhelmingly established and the authorities produced and read in court. Father Sheehan further swore positively that all appeals of priests were prohibited. Taking this to be true, does it not prove that he has failed to pursue the proper remedies in the Church, through ignorance of the canon law; and has he not, by his own testimony, proven himself out of court? For, your Honor, we have proved that there is an abundant remedy in the Church, in the form of an extra judicial appeal. The plaintiff has not dared to question the accuracy of the clear and convincing testimony of Dr. Quigley and Dr. Hecht on this subject, who, after making canon law the study of their lives, declare that not only does such a remedy exist by way of extra judicial appeal to the Archbishop, but they produce and read in court authorities showing that such has been the law, unquestioned and undisputed, of the Catholic Church for centuries, and that until this trial they never heard the law disputed or the jurisdiction of the Archbishop doubted, to hear and determine such a question as arises by plaintiff's suit and claim here by way of an extra judicial appeal. Nor is such jurisdiction optional; they aver the Bishop must hear such appeals.

In the final consideration of this case what disposition will this court make, ignoring all living witnesses of the canon law of the standard writers, centuries old, that have come down to us, and from their pages testify that such remedies such jurisdiction has always existed in the Catholic Church on extra judicial appeals to the Archbishop? I go further than that. Were the right of appeal not guaranteed the humblest, the weakest, even the most degraded member of the Catholic Church from the extra judicial acts of her Bishops, I declare here that, proud as I am of my religion and the history of the church, I would renounce it to-morrow if I believed

the Catholic Church tolerated so glaring a defect as the want of a remedy and of relief in her own tribunals for the imposition of a wrong by a Bishop or priest for the denial of justice, for any grievance to priest or layman. And why? Because, believing the Church to be perfect, this would be a shameful wrong. Because, if such a defect were tolerated by the Church, Father Sheehan might be her victim to-day of irresponsible power, and to-morrow, as a layman, the same rule may be applied to me; the next day, Dr. Quigley, or any man in the Church, may be stricken down without means of redress. The organization and the history of the Catholic Church for 1800 years—and she has been perfecting her code during all that time—proves that there does exist an abundant remedy and appeals from acts of injustice of any kind. “Injustice,” the very words of the canon. What a broad term, that is more comprehensive than any phrase used in the civil law. Nothing narrow, nothing contracted about that language, and the remedies are, as the term implies, correlative and as comprehensive as the term itself. A remedy is afforded with the Church for the denial of justice to plaintiff, and it is made the absolute duty, by canon law, of the Archbishop to assume jurisdiction, to grant a hearing, and decide the case on extra-judicial appeal. The testimony of this fact is before the court. We have proven, further, that if the Archbishop is neglectful of his duties or acts in collusion with the Bishop, and disregards his oath of office, then the humblest man in the Church, be he layman or cleric, can carry his complaint to the highest tribunal in the Church; and that without money and without price. No visit to Rome or personal loss of time is necessary on the part of an appellant; postage and stationery is all that is required to procure a hearing of any case. The testimony in this case shows that in cases of urgent appeals, where the poverty of the appellant is set forth as a cause for urgent disposition of the case, it will be advanced on the list and that the decision of the Ecclesiastical Court will come swift and sure. But where no reason for urgency exists and the interests are not so great, poverty not being in question and the matter of support not being involved, the canon law, like our civil law, takes its time to adjudicate.

But in cases where the necessities of the parties are such that a speedy relief is requisite, the unanimous decision of the canonists and all the testimony in this case show that three weeks or four at

the furthest would be enough time for their adjudication, thus proving the existence of tribunals a swift and speedy redress of all grievances within the Church. My remarks apply to extra-judicial appeals exclusively and the remedies on that subject.

Now to come to the question whether Father Sheehan in this case did or did not invoke such remedies as the Church afforded. Considering his own testimony, I do not believe that he was at the time of the refusal of the office in ignorance of the canon law on this subject. He is an intelligent man, and seems to have studied this matter too much, for him to come here and plead his ignorance of the canon law, and to say such remedies by way of extra-judicial do not exist, although his sworn testimony does so assert. The strong circumstance in this case which justifies me in thus doubting his testimony on this point is the conflict in his own testimony narrating his actions, as he says they occurred in the early days of his trouble.

Read that part of his testimony and see if his actions and declaration then do not conflict with his utterances here as an expert witness on canon law. He says he went to the Archbishop and to Rome for redress of his grievances, and to complain of the outrageous conduct of Bishop Tuigg in refusing him an appointment to a congregation. It is a principle of law, that contracts may be construed by the action or interpretation the parties themselves may give it by their conduct.

Apply this principle. When Father Sheehan first applied to Bishop Tuigg for an appointment to a mission and was refused, his declaration to Bishop Tuigg was "I shall see your superior, I shall remonstrate, I shall protest." Take his own statement, and was there a question as he and Father Nolan persist in treating the action of Bishop Tuigg, then before Bishop Tuigg of a criminal cause, with Father Sheehan. Was it not simply denying a request? Was there a question, then, involving a sentence or anything of that kind. Yet this action, this refusal is claimed to be in the nature of penal proceeding, a solemn sentence deposing him from the priesthood. He says the Bishop refused to recognize or treat with him, because he was a foreigner. Suppose this be admitted, 'was that arraigning Father Sheehan upon a criminal charge? Did he need to be tried or sentenced, as a foreigner, by the Bishop, on that charge before he could go to Rome to have redress for that wrong? Father Nolan and Father Sheehan insist that without sentence in

such a case no appeal would lie or relief be obtainable. That charge is consistent with the greatest morality and the greatest purity of life, it raised merely a question of ecclesiastical citizenship of the diocese, and would be such a denial of justice on the part of Bishop Tuigg, in case he were wrong, as that the Archbishop under the canon law, was bound, if invoked, to hear an extra judicial appeal. Do not all the authorities here concur in saying that, in cases of that character, an extra judicial appeal is allowed? "I have decided you don't belong to my diocese," says Bishop Tuigg. The right of appeal from that decision belonged to Father Sheehan. However, according to their absurd theory, Bishop Tuigg's course should have been, after so deciding, to notify Father Sheehan, "You don't belong to the Diocese of Pittsburgh. I will therefore cite you before my counsel and try you on that criminal charge, and to give you the right of appeal I must convict and sentence you." Then the Bishop's court would be convened and testimony taken on both sides of the grave, criminal charge of being a foreigner to the diocese, and if convicted of the dreadful charge Bishop Tuigg would be obliged to impose a sentence. What sentence would he, the Bishop, impose? It would hardly be excommunication from the Church. The sentence could only be, "You don't belong to my diocese." This would be no sentence, because it would involve no punishment or penalty. If I understand Father Sheehan's testimony, the Bishop's refusal to appoint to office was on the ground that he did not belong to the diocese. It was a refusal, because of being a foreigner to the diocese, to give him the right to work in the diocese; that is his testimony. Every conceivable phase of the case was inquired into and questions put to the witnesses on the stand, and I asked them if the decision of the Bishop that he did not belong to the diocese was reviewable by extra judicial appeal; and the response by all the defendant's canonists, fortified by authorities, was that from such a decision as that, that ruling or refusal on the part of a Bishop, an appeal would lie just as well as if the charge had been criminal, and be as remedial and comprehensive, although taken from the extra judicial action of the Bishop, because the Archbishop had the jurisdiction.

Now, the plaintiff, not having by his own testimony invoked and exhausted the remedy afforded by the Church, is out of court. When preparing the affidavit of defence we gave his action on this

matter of appealing a different construction from what by plaintiff's own testimony he avers is now the case. He admits that he did go to the Archbishop to submit this very case. What right had he to go if no right of appeal, no extra judicial appeal existed? He did go to Rome to lay before the highest tribunals of the Church his complaint against the outrageous conduct of the Bishop. He says he submitted certain papers in his case in Court at Rome. Why did he go if no remedy existed? He states in his testimony a fact to which we think the court should give very considerable weight in determining this very question of whether he appealed, and that is, he went to Rome to complain of the outrageous treatment of Bishop Tuigg. That was the object of his mission. He did complain; he did pursue his remedy before the authorities of the Propaganda—the proper court there—he remained in Rome until this court informed him his case was decided. They told him, as his evidence in the case shows, “Your case has been disposed of. You are remanded to your diocese. We have written Bishop Tuigg a letter disposing of your case.” We produce that letter. It shows an adverse decision on the very question of his right to an appointment and salary, the burthen of his complaint. That is the decision upon the submission of his case, as he testifies, to the tribunal in Rome, and he is bound by that letter and bound by that authority. He thus recognized that court in Rome, whether he had the right of appeal or not, and that court recognized him and his case by deciding it. He went to Rome and invoked that forum and submitted his case, agreeing thereby to abide by the decision. We offered in evidence the letter from Rome, showing how it was decided. Should this letter of Cardinal Prefect not have weight in determining the matter of his appeal? He volunteers the statement that the Cardinals of the court at Rome were astounded at Bishop Tuigg's ignorance of canon law when he informed them of the Bishop's treatment, and saying that he was not a subject of the diocese of Pittsburgh. Is this statement of his not ridiculous? Didn't the Cardinals sustain the Bishop? If astonished at his ignorance and conduct, why did the Cardinals not reverse Bishop Tuigg's action towards Father Sheehan? They notified the Bishop that this man under their eyes in Rome, whilst under the eyes of the court to which he had submitted his case, had become addicted to the vice of intemperance. Is there a word in these letters censuring the action of the Bishop?

These same Cardinals write to the Bishop, as appears by the letters in evidence, that they were obliged by reason of his conduct to order Father Sheehan to make a spiritual retreat to the Passionist Monastery in Rome. Do not they also say when they write the final letter, "*We have commanded him to return home*"? Certainly an unusual order. If he were in Rome, possessed of all the qualifications and in good standing, as he in one part of his testimony boastfully asserts of himself; if he were there without any disqualifications, on proper leave of absence, would it require the absolute command of the Propaganda to make him return to his diocese? And then how does he obey this command of the highest authority of the Church? How and when does he return? You will see, from his own admission, that four or five weeks would have been an abundance of time for his journey from Rome; yet he takes all of eight months to reach Pittsburgh, never thinking it worth while to telegraph or even to send a postal card to the defendant whom he now prosecutes, to acknowledge him as his Bishop and to claim the allegiance to him as the head of the diocese, which he now asserts. He claims in this court that this Bishop and diocese, which was so ignored, is liable for his support and for his salary from the date of his unlawful absence. No letters; no account of his conduct during his stay. Defiant he returns as he left and demands an appointment again from Bishop Tuigg. He obeys the Propaganda in Rome and makes a spiritual retreat. Returning to his diocese, he refused to obey his lawful Bishop, who directs a retreat. A more unjust, preposterous and iniquitous claim than this plaintiff presents for salary as a priest was never heard in a court of justice. Allow him salary for the time when he was absent from the diocese without authority of the Bishop and diocese, without which he could not legally place a foot outside of the diocese! Reward rebellion and disobedience by salary and support! Who gave him permission to wander over Europe? Away from the diocese nearly two out of three years for which he claims salary for this very period in this suit. Who gave him permission after his return from Rome, after disobeying the command of Rome, to return to Pittsburgh? To wander around the country in idleness, where is his authority for that? It is easy, now that Bishop Domenec is dead and gone, to claim that he did not abandon the diocese, and that for the original absence during his administration he had letters and leave

of absence from him. Dead men cannot contradict. He does not even charge that Bishop Tuigg was ever notified by him directly or indirectly of his return from Rome to this country, or of his whereabouts. Was not this disobedience and renewed absence from the diocese an actual abandonment of his allegiance to the diocese? Now, let me put it as a question of duty and common sense. Was not he bound by every obligation of his priestly office and of canon law to immediately report to Bishop Tuigg on his return, and aver his willingness to abide by the decision of the Bishop. Was he not bound to offer submission and return to duty? He was not sick. No excuse or extenuation of his conduct has been vouchsafed to the Bishop to this day. Why? If his time were well spent could he not show it? To allow him support without this would be an endorsement of his illegal and unauthorized absence, and would be to offer a premium or an inducement to priests in the diocese to desert their flocks and wander over the country whithersoever they please, subject to no ecclesiastical authority and without the license of any Bishop. At the end of their recreation they could return and demand support and maintenance from the very Bishop and diocese they abandoned. To state such a proposition is to answer it.

The consequence of allowing plaintiff's claim is fraught with great danger to the stability of discipline and good order in all churches. If this man, one of two hundred priests in the Diocese of Pittsburgh, can wander all over the country in idleness without the permission of the Bishop, and can by his own act absolve himself from his canonical oath of residence within the diocese, and dissolve the relations that exist between the diocese and himself at will, if that is the doctrine to be maintained here by plaintiff's recovery in this case, then good-bye to all canonical obedience, canonical residence and canonical behavior. By such a decision there will be a most serious infraction of the constitutional obligation of non-interference of State and Church. For such a decision will be introducing into the Catholic Church chaos and disorder for obedience and discipline; it will be setting a premium upon revolutionary and rebellious conduct; it will be subversive of morality, and in the end will strike a blow at its whole organization. The civil court, by exercising jurisdiction in such a case and making such a decision, may now injure the Catholic Church, but once allow the principle, and to-morrow it may be the Episcopal, the Methodist,

or the Presbyterian Church, where a member who is dissatisfied on a question of church discipline may invoke your aid, and if granted these churches have each sustained a blow. If a disobedient or refractory member, or a disobedient or rebellious officer of a church, cannot be restricted by his ecclesiastical superiors under the circumstances developed in this case, and be kept from dragging his case for review in civil courts, why every religious organization may in turn have its church action on members and officers reviewed in civil courts. And every time the church courts are reversed on these questions their authority of course is weakened until finally destroyed.

Now, I wish to call your attention to some cases I have on my brief. In particular the somewhat celebrated Stack and O'Hara case in this State, the scope of which decision has been very much exaggerated. It was an appeal by the Bishop from the equity side of the court, the finding of a master in the lower court imposing the costs on the Bishop, although he had actually won the case. Upon advice of his counsel he took it to the Supreme Court on the narrow issue as to whether it was a just imposition of the costs. Judge Mercur, who wrote the first opinion of the Supreme Court as a mere dictum, comments upon the rights and duties of Bishops and priests in the Catholic Church, a subject that was not really in the case before him.

By reason of this dictum on so important a question attracting great attention, and the fact that two judges dissented from the opinion, an application for reargument was granted, and Honor Judge Sharswood, having concurred in the first opinion, delivered a subsequent opinion, expressly stating that it was not intended by that first opinion in any way to decide or enter into the discussion of the relations between Catholic priests and their bishops. The only question, he says, before the court was that of costs. And he was not satisfied that the costs had been improperly imposed on the Bishop. The same rule, he states, that prevails in the common law does not prevail in equity, the imposition of the costs being a matter entirely within the sound discretion of the Master in equity. This makes Stack and O'Hara a very simple case. His Honor, Judge Sterrett, and his Honor, Judge Trunkey, sat on the Supreme bench when it was argued. Those two judges, on the consideration of the Stack-O'Hara case, dissent entirely from the opinion as delivered

by Judge Mercur. Their opinion is reported in the *Legal Intelligencer*. Judge Trunkey, who wrote that opinion, Judge Sterrett concurring, expresses the opinion that Father Stack, the plaintiff, should be remitted to the ecclesiastical courts until he had satisfied the civil courts that he had exhausted his remedies in the ecclesiastical courts; that he hadn't done so, and therefore they had no right to entertain jurisdiction of his case. Judge Trunkey's words are: "The removal of the plaintiff as pastor was consummated before the filing of the bill. *The plaintiff did not exhaust his remedies within the Church.* A priest accused of an offence or moral delinquency is entitled to a trial according to the laws of the Church, and must be convicted in due course of procedure before censure or suspension. This being so the plaintiff calls his removal from office a suspension, and urges that the wrong done by the defendant consists in a charge of mal-administration of a sacred office, followed by conviction and sentence, without notice of the accusation, hearing or trial." The charge, condemnation and punishment, all fall at once and together upon the devoted head of their victim.

For this alleged outrage upon the plaintiff, undeniably in violation of common law, he claims and proves by himself that there is no remedy within the Church. That a priest may be struck down by a blow without the right of appeal or recourse to the Bishop's superior, is amazing."

The answer avers "the right of appeal from the act or sentence of the Bishop done or passed in violation of the law of said Church." A very learned witness said: "Mr. Stack, if aggrieved by the act of his bishop, undoubtedly had a remedy within the Church itself." *From an extra-judicial sentence, an extra-judicial appeal is allowed.* Any exercise of power must be rational, and based on Christian motives, and this the Church teaches and practically enforces in cases of appeal or recourse, when the Bishop has exercised his power of removal from anger, malevolence or to the detriment to the third party.

"The master reports that the plaintiff has not shown that he made effort to obtain redress within the Church, and I am not convinced that the action of the Bishop was not subject to review by his superiors."

Here are two of the Supreme Court Judges in this State concurring in that opinion. The Chief Justice, who concurred in the

opinion of Judge Mercur, filed a subsequent opinion, in which he disclaims any right or intention of the court to trench upon ground of church discipline on its members as too sacred for the court, and claims that the only question in the case decided was the imposition of costs.

Now, I think, your Honor, that in the brief submitted, and the authorities therein cited, which I trust your Honor will look at at your leisure, I have covered pretty much the entire ground. In the delivery of my argument I have taken up a longer time than I intended, but the three hundred pages of testimony and the importance of the question at issue must be my excuse. Allow me before closing to call your attention briefly to another feature of this case: Suppose the Diocese and Bishop are a *quasi* corporation, is the Diocese liable? It is a well settled rule and principle of law, which requires the citation of no authority here, that in all cases of contracts with corporate officers or officers of a *quasi* corporation, there can be no recovery unless upon an *express promise* made on the part of itself or authorized officials; in other words, a different rule prevails in this respect between individuals and that which applies to corporations. Taking for granted that in the final disposition of this case you will treat the Bishop and the Diocese as a *quasi* corporation; then the Bishop would be the chief executive officer of such corporation under the laws relating to that class in this State. Applying, then, this rule to the Bishop as a corporation officer, no contract implied for services rendered, *quantum meruit*, could be maintained, and nothing short of an *express promise* to pay plaintiff would bind the diocese. With corporations, or *quasi* corporations, no implied contract lies. It must be an express contract, and upon an express promise.

Assuming it to be a contract set up here by plaintiff to belong to that category of cases, does plaintiff prove that the Bishop ever promised to pay him salary? Can he under the law applicable to this case claim salary on a *quantum meruit* for services not rendered? Does the proof show that he rendered any service to the Bishop or the Diocese at all for the time embraced in this suit?

Another principle of law applicable to plaintiff's case to estop his recovery in a civil court may be invoked. It is a well settled law of this State that where it appears that parties, before bringing suit in a civil court, have agreed or

chosen for settlement of all disputes a forum, the law will recognize and insist upon the parties complying with their agreement to have the forum, or method of settlement so chosen, first pass upon the question before the civil courts will assume jurisdiction. This is not only applicable in the case of ecclesiastical or other societies, but prevails in every kind of civil transactions. The recent case of Howard against the Allegheny Valley Railroad illustrates this principle of compelling parties to exhaust their chosen remedies outside of civil courts before such courts will give ear to their cases. In that case Howard entered into a contract with the Railroad Company, and the contract, in writing, specified that the parties, in case of disputes, &c., would take no recourse to law, but would submit all disputed matters, in case of controversy, to the Chief Engineer of the railroad, his decision to be binding. On violation of the contract Howard, without submitting the matter to the Chief Engineer, brought a civil suit, and losing it, he carried it to the Supreme Court of this State, and there it was decided that the suit was premature, and could not be maintained until an offer to submit the controversy to the Chief Engineer was proven. In this very case, applying the decision of the Howard case, I contend that the umpire or court selected by Father Sheehan, by his ordination oath, for the adjudication of all controversies about his rights in the Church, was the Bishop of the Diocese, a judge of the ecclesiastical court conceded by all canonists to have judicial authority. By his oath of obedience he was bound to abide by that decision of his until revoked by the superior of Bishop Tuigg in the Church. If dissatisfied with that ruling he had a right to apply to the Archbishop for relief, and if dissatisfied with the decision of the Archbishop, he had the right to carry his case to the supreme court of the Church. Bound, therefore, by his oath of ordination to submit his trouble and controversies in the Church to the Church tribunals, what right, conceding the case here to be a question of property or civil contract, has plaintiff to thus ignore the courts of his own choice? The non-production by plaintiff of testimony within his power, if true, in this case, is a subject upon which I ask special attention on the part of the court. All through our law the principle prevails, that in case where evidence is in the power of the party to produce, and he does not produce it when within his reach, every inference as to the effect of such evidence, if offered, is against him on the subject. The construction

of the Diocesan regulation on salary of pastors under which he claims the amount of \$800 salary is due him as a pastor, whether employed or not, is surely susceptible of stronger proof than his own testimony and that of Father Nolan. There are 199 other priests in the Diocese, many grown venerable in the service and familiar with the law and usage, since Bishop O'Conner's days, on salary, that could have been subpoenaed here by plaintiff to corroborate plaintiff's construction of the statute if it was correct, and that they always so understood it.

Father Sheehan, with this power of sustaining his theory, if true, did not think proper to subpoena a single priest other than Father Nolan to establish his construction. The testimony was certainly within his power. This failure to produce such material evidence on points disputed must be construed adversely to plaintiff's theory of the statute on salary of pastors.

Before concluding, I wish to impress it on the court as a governing feature of the case that the testimony throughout shows that in Father Sheehan the Bishop had a refractory—a disobedient member. I need not call him a criminal member, but one presenting himself on the very threshold of the Bishop's consecration, demanding an appointment and disputing the authority of the Bishop to prescribe terms on which to appoint him; when admonished to go into retirement he refused. There is the inception of this unhappy controversy. Who is to blame? Whose duty was it to obey? Whose oath required him to obey? What excuse is given for refusing to obey? Has not every act since of plaintiff been continuous rebellion? If this court decides that it is beyond the jurisdiction of a newly ordained Bishop to parentally admonish one of his children, to make a retreat to a house of prayer for spiritual reformation, the case is ended, and plaintiff's whole claim should be allowed. That such power, however, is not only within the scope of the power and right of a Bishop to admonish, but by the canon law it is an absolute duty imposed on the Bishop to require it. Any priest, so long absent from the diocese and off duty, should be required to demonstrate his fitness by leading the life of an ecclesiastic and seeking by retirement, fasting and prayer to recover the lost qualifications. Now I need not urge, because it has been established by the testimony conclusively, that the burden of proof, of absolute, affirmative proof of plaintiff possessing all the necessary qualifications on applying to

the Bishop for the office of pastor, is by canon law, required from the applicant. No Bishop in case of doubt dare without sin dispense with such proof. To say the least of plaintiff's case, was it not one of doubt? Nor is this affirmative proof an unreasonable regulation required by the Catholic Church alone. It prevails in many other denominations. Take the case of the Methodist religion. Suppose the case of a preacher absent from the Conference for a number of years and he returns to that body at the triennial distribution of appointments and asks for a pastorate. The first thing that the Conference would ask such an applicant would be the same as Bishop Tuigg demanded of plaintiff: Give an account of yourself? Where are your letters? Where have you been? If he refuses to explain or account, what will be the action of the Conference? Has it not the right to refuse him an appointment of any kind? Has the Conference not a right to withhold the office of preaching from him? This without trying or sentencing him, but for lack of letters, lack of proof of deportment and qualification during his long absence, which he is bound to furnish.

If the man, though not a criminal, has lately been leading an irregular life, and is, at the date of his application, struggling against his passions and weakness in order to reform, would it not be the duty of the Conference in charity to the minister, as well as out of a due regard for religion and of a sense of responsibility to God to withhold from such a man the credentials that would empower him to go out and preach the word of God? By incurring the risk of scandal and harm to religion, it seems to me any Conference would be doing wrong and violating the duties of their office if they did otherwise. In this case I may repeat we are not accusing Father Sheehan of a crime; we are not asking that he be degraded; we are not asking for any unlawful exercise of authority, or any punishment, or the infliction of any sentence; and we would gladly, if convinced that he is qualified, place him to-morrow in a position of honor and profit to himself spiritually and temporally. In these days, when the wants of the Church are so great, and especially in this land and under our free institutions where she is increasing so rapidly, and is keeping step to the march of progress of our great country, herself everywhere creating new dioceses in the East and the great West, and when her people are making heavy contributions for seminaries to educate and qualify laborers for the vineyard, do you think

it reasonable for one moment, ambitious and desirous as the Bishops, the representative of that Church, are to have every congregation fed by faithful pastors, is it reasonable or probable at all that a Bishop would act as plaintiff says Bishop Tuigg did in this case? That any Bishop, with this pressing demand and needs of the Church, would, as plaintiff asserts was done, turn away any priest who presented the proper qualifications or with all credentials required for appointment to serve a congregation, is incredible. We know no Bishop would do so. It is contrary to common sense as well as justice to believe so. The very idea is absurd. Every probability is against the truth of such an assertion.

Now, may it please the court, let me summarize this case. The record by which alone you are to determine this case shows it to be brought to recover, not a decent support, not a lost title to mission, not food and raiment, but for salary of \$2,400 at \$800 per annum as a qualified priest, ready, willing and qualified continuously for the three years from 1876 to 1879, claiming to be the amount allowed under the diocesan statutes for actual work, actual service on the mission. No where in the diocesan regulation or by the "title of mission" or "right to decent support" has plaintiff shown that by canon law this sum is allowed a priest, work or no work. Salary by canon law is due only to those who work. It is therefore for salary, and salary alone, plaintiff's claim and defendant's liability is to be adjudged. Plaintiff sues for a pastor's salary and seeks to review and reverse the Bishop's ruling and decision refusing to appoint plaintiff to a mission. The question of support or maintenance of plaintiff as a priest unemployed is no where raised by plaintiff's affidavit of claim declaration filed of record. Here is the language of the affidavit of claim—plaintiff swears: "That he has at different times made application for official employment to the Bishop, and has at all times held himself in readiness for the discharge of official duty under the Bishop aforesaid; and there is now due and owing affiant the sum aforesaid for *salary* at the rate of eight hundred dollars per annum, such being the legal and lawful allowance due affiant by the Bishop aforesaid according to the laws and usages of the diocese." Not a word here about the claim of a "title to decent support" or "maintenance." He sues only for salary, for emoluments of an office. In the able and care-

fully prepared printed argument of Mr. Watterson, of counsel for plaintiff, the real question is stated very clearly to be as follows :

“ The real question at issue in this case is : Whether Rev. P. M. Sheehan, by the laws of the Catholic Church, the custom of the diocese of Pittsburgh and the laws of Pennsylvania, is entitled to his *salary as a priest of the said diocese* from the date of his tender of services to Right Rev. John Tuigg, Bishop of said diocese.” This question, so broadly, fairly stated, we have tried throughout the trial, and this argument, to meet as the real issue; for it involves the jurisdiction of a civil court to review the discretionary action of a Bishop in the matter of appointments of priests to pastorship where they could earn salary. That is plaintiff’s proposition as sworn to and stated by his counsel, and he asks this court to review Bishop Tuigg’s action in refusing to appoint plaintiff, and for such improper refusal as he alleges to allow plaintiff three years salary. It will be unprecedented for a civil court upon any pretext to interfere with this purely church question.

As to plaintiff’s right to support by his ordination as a priest, it has never been refused or denied to him by defendant, for the reason that at no time did plaintiff ever demand his living or decent support from defendant—at least under the proof submitted he never did so in this case. Can this court, without proof of demand for support, and upon a claim not sued for and not embraced in plaintiff’s statement of what the real subject matter of the suit is, be justified in going outside of the record to award plaintiff any sum whatever as a decent support instead of the salary, his real claim.

If qualified and worthy, the plaintiff is entitled to all he claims, if the court considers it has jurisdiction to review and reverse the Bishop’s action. The refusal of defendant to appoint to office is the gravamen of plaintiff’s grievance and suit, and without an express claim and express refusal of defendant to support plaintiff, the jurisdiction of the court would be purely gratuitous to decide a matter not before it.

The serious, urgent and important matter, and the sole question in this case which arouses the interest of defendant, and which he contests here, is the assertion of the plaintiff of his right to have this court review and reverse the action of defendant as Bishop in denying plaintiff a spiritual office and its salary.

If your Honor repudiates jurisdiction and declines to interfere in this internal, regulation of the Church and the discretion of the Bishop, as I think by the Constitution and laws your duty will oblige you to do, the mere question of plaintiff's right to support, his title, his property, &c., as he terms it, not being the subject matter of this suit, or in contest, can easily be adjudicated elsewhere and at another time. When this issue is raised and presented to this court it will be time enough for your Honor to pass upon it. Recapitulating, therefore, defendant's position, I assert :

First. That the proof shows that the Bishop on assuming his office and its obligations acquires no personal or real property individually, every portion of the real and personal property of the diocese and its revenues is stamped with an express trust declaring to the world that the man holding the office of Bishop does not hold or enjoy the same personally or individually. Plaintiff knew this at his ordination, and when bringing this suit. Does this fact not present an insuperable barrier to the maintenance of this suit, an action at common law, against a person individually for official acts or obligations assumed by him as trustee, and not individually. Does not plaintiff seek to recover under the evidence upon an official obligation for which the diocese, the *cestui que trust*, is liable and not the defendant individually? Being a trustee, simply, is the Bishop liable in any other form than in equity for alleged delinquency in discharge of his official or trust duties? Are not trusts made especially the subject of courts of equity in this State? And have not equity courts by the laws of our State not exclusive jurisdiction over trusts and trustees? In other words, individually, Bishop Tuigg owes no obligation of any kind to priest Sheehan—any liability is entirely official—in his trust capacity.

Second. That the Bishops of the Catholic Church are by the canon law invested with discretion to appoint and pass upon qualification of priests demanding appointment, and for the exercise of such discretion no civil court, in face of the constitutional guarantees of freedom of all religion in this State, will interfere.

Third. That the preponderance in numbers of witnesses and experience in canon law, establish the existence of right of appeal for any alleged grievance or denial of justice within the Catholic Church. That these witnesses, Rt. Rev. John Tuigg, Rev. Dr. Quigley, Rev. Dr. Hecht, Rev. S. Wall, affirmed the existence of an ade-

quate remedy often in practice invoked, of an extra judicial appeal from all extra judicial actions or rulings of a Bishop, and that the Archbishop was bound to exercise jurisdiction on such extra judicial appeals. These living witnesses were fortified by such standard canon law authors as Reiffenstuel, Schmalzgrueber, Craisson, Leureinus, and Dr. S. B. Smith, of our own country, in every opinion. So that as a material fact to be found in this case, I present this overwhelming array of proof, answered only by the vague, uncertain and even negative opinions of plaintiff and Father Nolan, unsupported by a single author in canon law. If this fact is proven satisfactorily to your Honor, will not your duty be plain to remit the plaintiff to the forum which he swore at his ordination to abide by and submit to for life.

But it may be attempted to demonstrate that there is a conflict of jurisdiction here, some kind of antagonism between the jurisdiction of this court and the court of Rome. Nothing could be more fallacious than this assertion. This court deals exclusively in civil rights and property of citizens. The Roman court acts solely upon *spiritual* rights and spiritual property. Each court is supreme in its sphere. By our constitution, by the laws of the land, and not by virtue of any foreign power or sovereignty, church jurisdiction is exclusive and supreme in church matters, and in church matters only. This claim is asserted by all churches and religious bodies in this country, and is fully accorded to all by law, and not by mere toleration or favor. Outside of church matters, on civil or political subjects, notwithstanding the oft-refuted slander to the contrary, Catholics owe no allegiance or obedience to the spiritual rulers of their church.

If this were a question of civil property or civil right of this plaintiff, the jurisdiction of the civil court would not be questioned. The whole question, we contend, concerns a spiritual office and its emoluments, which under the ruling in the Cheeney case, the spiritual court and not the civil court has exclusive jurisdiction.

This plaintiff's "title" or "office" as a priest, as has been repeatedly said, is not the controversy here. To secure plaintiff his support, his living, let him first submit, obey and reverence his Bishop as his oath requires. The duties and obligations of plaintiff and defendant are certainly reciprocal. If support is due, obedience is also due. If support is due, residence within the limits of the

diocese is also due by plaintiff. If support is due, so also is reverence to the office of Bishop; plaintiff can hardly claim these obligations are fulfilled by suing the Bishop in a civil court for salary.

By his own testimony Father Sheehan, on the occasion of appearing before Bishop Tuigg for appointment was not qualified under the laws of the Church for any appointment, being therefore disqualified for service, he stubbornly refused to take the steps deemed necessary to qualify himself by his lawful superior. His contumacy, continued ever since, should deprive him of salary and of support until he returns and submits to his superior in the church of his choice. Not by any act of the Bishop or of the Church, but by his own willful conduct, contumacy, disobedience, abandonment of all service to the diocese for years, Father Sheehan has lost his canonical rights. The act, the trial, the sentence is all self-imposed—it is all his own. It is his own free choice to remain unwilling to submit to those who have been placed in charge of the administration of the Church. What future is before him, outside of the office he has abandoned. What duty can he perform according to his oath while disobeying the Bishop. That oath of allegiance to the diocese and Bishop he says is yet obligatory on him. The Bishop, recognizing that fact, and that he has no power to absolve him from it, pursued the course he did and desired Father Sheehan to take the steps by him deemed necessary to enable him to comply with the requirements of his oath, whereby he might be the means of saving his own soul and that of many of the faithful, the objects of the ordination of a priest. Let Father Sheehan think of this, and consider how fruitless this suit in the civil court will be to bring him rest or comfort in the future, and that the qualifications for the priesthood cannot be supplied by a verdict of \$2,400 in this court. I have submitted all I have to say, and I ask pardon for occupying so much of the time of the court. I appeal to the court to take into consideration especially the unqualified refusal of Father Sheehan to comply with the Bishop's directions; the want of repentance manifested by him on all occasions; the want of submission, under his ordination oath, to his lawful superiors; his aimless, idle wanderings all over the country when his labors were badly needed at home. I know they have sought to apply the maxim familiar in our criminal courts, everybody is presumed innocent until proven guilty, and that therefore he had done nothing wrong requiring repentance. I say

the whole history of the unfortunate case, his own narrative especially, too plainly discloses the contrary, and that at that time he applied he lacked all the requirements for the high and holy position to which he aspired as the spiritual guide, the faithful shepherd, the exemplary pastor to point out the way of salvation not only by his own words, but especially by his example to the faithful entrusted to him as the pastor of souls.

ADDRESS OF THOMAS M. MARSHALL, ESQ.
COUNSEL FOR PLAINTIFF.

MAY IT PLEASE YOUR HONOR—

The cause which has occupied your time and received your patient attention is not a personal issue. It is true that Patrick M. Sheehan is the plaintiff; John Tuigg is the defendant. The plaintiff is a priest of the Roman Catholic diocese of Pittsburgh; the defendant is for the time the Bishop of the diocese. These men are not on trial. The respective rights and duties of priest and Bishop are comprised in the issue. We desired that nothing personal should be injected into this trial other than matters necessary to its just decision. It has pleased our adversaries to differ with us. Covert insinuations and indirect charges have been made against my "poor client." We do not fear a personal contest if thrust upon us; but let the charges be open and manly. Let them be uttered with the openness and frankness that always accompanies honest intention.

If any thing derogatory to the official or personal character of my client can truthfully be averred, let it be uttered under the responsibility of an oath; not insinuated in doubtful phrase or by insidious manner. In my experience as a lawyer I have learned to dread the evil effects of insinuation. An insinuation is an appeal to the imagination of the hearer. The range of its influence can only be measured by imagination. It has no limitation of fact or reason. But above all, it is cowardly. It is the role of the secret assassin. My client is not a drunkard; neither is he criminal. No man has dared to assume the responsibility of making a charge against his moral integrity or official character. But, addressing myself to the duty of the immediate hour, I shall hasten to the discussion of the only matters in issue. No time shall be wasted in reviewing or commenting upon the great mass of irrelevant and impertinent testimony introduced on behalf of the defendant.

First—Was there a contract between this priest, Patrick Sheehan, and this Bishop, John Tuigg? If so, was the contract violated or broken by the defendant?

Third—The remedy of the plaintiff.

Who is the Bishop of Pittsburgh? Your Honor will remember that I suggested in cross-examination that the Bishop was the diocese. The suggestion was received with sneering derision. How is the fact? I am here to-day to assert that practically the Bishop is the diocese. For all purposes of power, whether of administration, legislation or executive function, he is the diocese. There is no other legislative power; there is no other judicial power; there is no other executive power within the diocese. When we have named these three powers we have enumerated all the powers of government.

My friend Mr. McKenna naively declares that the Rt. Rev. John Tuigg, the defendant, is here reluctantly. Doubtless that is the usual attitude of defendants, especially in the criminal administration of public justice. The reluctance of the defendant is not worthy of remark. The vital question is deeper. Should he be subjected to the discipline of the law, is the material question. If your Honor will view this Bishop of the diocese, clothed with the sole legislative, the sole judicial and the sole executive power of the diocese, what other power can exist to fulfill the duties and responsibilities of the diocese? None. If clothed with these powers is not their exercise a duty? No power under heaven is bestowed without carrying with it corresponding duties. The day, the hour, he was inaugurated he took upon his conscience the solemn obligation before God, and in the presence of the people, faithfully to perform all the duties of his new station. One of these duties was to supply and furnish a decent, a becoming support to every member of his spiritual household; to every approved priest of the diocese, his agent, his servant in the Lord. This man was no stranger to the range of duties imposed. He had been a priest of this diocese for more than twenty years. He was familiar with the practice, custom and usage of the diocese. He who makes contract should know that the usage and customs under the law are a part of the contract as fully as if expressed in terms. What then was the duty of this defendant, when he assumed the episcopal robes? The office never dies; the man who exercises its function must die, but the office never. The contract for support was with the Bishop, not the man. The duty of fulfillment rests legally upon the Bishop. Did not Bishop Tuigg step into this diocesan home, furnished for the discharge of official duties? The property of the dio-

cese came to his hand and power with the bull of the chief Bishop. When he took his oath that he would furnish a decent support for the members of his household, he had furnished to him the powers and means to fulfill that oath in spirit and letter. My learned friend Mr. McKenna says if the Bishop had given his note he would be bound to pay. Is the solemn oath of a Catholic prelate not as efficient as a scrap of paper with his name attached thereto? When he took his oath of office he knew Father Sheehan was an approved priest of the diocese. He assumed before God and under the sanction of the law the duty of rendering a decent support to the plaintiff. The duty of support stands not upon the Bishop's oath alone. It has a two-fold consideration. My "poor client," poor in this world's goods, when he took his vows of ordination to minister in the things of God, swore perpetual fealty to the diocese and forever renounced the right to earn support by secular means. He stripped himself of the right or power to earn a living by any secular occupation or employment. He dare not break his vow. He stripped himself of all worldly and secular capacities, and laid hold of the horns of the altar for support. He swore he would keep himself at the call of his spiritual trustee, to live at the altar as the agent and servant of the Bishop. I say, therefore, there was a valid contract, founded upon two valuable and legal considerations. It should be operative in the domain of conscience. It is binding in the forums of the law.

This action was not instituted in haste. It was the result of mature consideration. The objection, that the proper remedy is in equity, is without force. There is a contract upon full and adequate considerations. There is a remedy at law; equity has no jurisdiction. The measure of damage for a violated contract is especially within cognizance of the law.

The plaintiff, the Reverend Sheehan, an approved priest of the diocese when Bishop Tuigg succeeded Bishop Domenec, stands upon his "title" as fully and clearly as the Rev. John Tuigg can upon his title. That his title as an approved priest is not denied. It is proved beyond doubt or cavil. It is admitted by the defendant. The letters from Rome add confirmation to the other proofs. I have said that the plaintiff's character as an approved priest of the diocese was admitted by the defendant. Since our law has opened the lips of parties to testify in their own behalf, admissions are

more frequent than formerly in the administration of justice. The plaintiff was called and testified to his title as an approved priest of the diocese. Other witnesses were called and testified to the same fact. The defendant went upon the stand and testified in his own behalf. He did not deny the allegation of the plaintiff. The truth of the fact was clearly within his knowledge. This silence of the defendant was an admission to the court of the truth of plaintiff's testimony. I pass by, as unworthy of further notice or observation, the insinuations that the plaintiff was intemperate, rusty in his knowledge of the service, and had not kept himself abreast with his profession. These insinuations had better never been made. If true, they should have been uttered with the boldness of truth. Not being true they will rebound to the discomfiture of their inventors.

Being an approved priest the right to support is a legal consequence. Who owes the support? The Bishop is the only power of government within the diocese. He succeeded to all the property and revenue of the diocese. The statement of these admitted facts makes further argument unnecessary. Every witness who has been called to testify, save one, declared in the most explicit terms that it was the duty of the Bishop to support the priests of his diocese. This is admitted by the defendant in his testimony, page 53; testified to by Father Hickey, page 32; by Dr. Hecht, pages 275, 276, 277, 278, 279, 280 and 281. I must not omit to refer to the luminous and logical statement of the whole case by that learned witness, the Rev. W. A. Nolan. It is refreshing to find a witness whose testimony is a pathway of light, illuminating all the subjects of investigation. The very imperfect report of his testimony fails to do justice to the learning, acumen and frankness of the witness. The right of support is not dependent upon work. Work or no work, the right of support flows from the "title" of the priest of the diocese.

"A title to decent support must be secured to the priest before ordination," is the language of Dr. Hecht. It is the language of Mr. Nolan. It is the testimony of every witness worthy of consideration in the cause.

May it please your Honor, there is no analogy between other churches and other priests than Roman Catholics. No other church demands of its ministers the same absolute obedience. No other church demands of the priest as minister the entire abnegation of

his secular powers and capacities. No other church demands that the priest or minister shall forego all intimate social relations. The church is all in all to the priest, and the church must supply livelihood to its ministering servants. What is this "title" of the approved priest? Is it property?

Under the title of "Estates" temporal hereditaments, Blackstone defines corodies:

"A right of sustenance, or to secure certain allotments of victuals and provisions for one's maintenance." Lord Coke declares the same doctrine.

The Supreme Court of Pennsylvania, in *O'Hara vs. Stack*, declares the same doctrine. I need scarcely refer your Honor to the late case in Lancaster county, where two members of the bar were disbarred. The Supreme Court reverse the Common Pleas, and declare that their profession was property. The Supreme Court of the United States have approved the same wholesome law. The plaintiff's title was a property. Here we have the principle established beyond dispute that the living guaranteed to this plaintiff was his property. That the defendant, the Bishop of Pittsburgh, is liable for this property is clear. His solemn vows and oath of office, two legal considerations, sustain the right.

How does the defendant seek to escape from this moral and legal duty. This is not a question between Patrick M. Sheehan and John Tuigg. It is a question of magnitude between four thousand priests and a legally constituted oligarchy of Bishops, who desire to own and use the bodies and souls of these priests. I deny that there is any such slavery in this land. Black slavery has been abolished, and white slavery must not be permitted to grow rank within the shadow of the Roman Catholic Church. There is no such law in the Catholic Church that the Bishop may starve his priests. If canon law sustained that doctrine our law will not suffer it to live within our borders.

What is the Roman Catholic Church? It is not a corporation. It may be a *quasi* religious society. It is a thing by itself. Its head is in Rome; an alien; its lesser Bishops and subjects scattered throughout the civilized world. The Catholic Church, as such, could not be incorporated under our laws as a religious society. Why? Because our statute declares that citizens of Pennsylvania can be incorporated—none other. Our first Act on this subject is May,

1791. Under this Act citizens of Pennsylvania may prepare their proposed form of charter. It is then submitted to the judges of the Supreme Court of the State. They examine its provisions; if they find that its purpose is beneficial, if they are satisfied that its objects and principles are in harmony with the law of the land, they certify it is lawful and the charter may be granted. But the essential matter of citizenship must appear. Harmony with the law of the land is also essential.

This Roman Catholic Church is not a corporation. It could not be a corporation under our laws. It has one and only one man in this diocese to legislate, to interpret and to execute its laws. All the others are his servants in so far as they are associated. Then how does it exist? It exists because under one organic law, one constitution, freedom of religious belief is secured. It guarantees freedom in religious belief. But it does not guarantee the power of taking a man's labor for nothing. It does not guarantee to Bishop or Pope the right or power to take a man's property from him without due process of law, without a trial by the law of the land. It will not permit a foreign or a home spiritual potentate to paralyze the natural faculties of a man by solemn religious vows, debarring him from earning his bread "by the sweat of his face," and then turn him out at pleasure to starve and die if he does not bow at the lordly will of some man whom the Pope enobles by his Bull. This Roman Catholic Church is not a corporation. It is not a religious society. Society implies more than one. What is this Roman Catholic Diocese? It is a branch of a foreign power, which by tolerance of our law is permitted to exercise spiritual functions, but the moment it reaches its hand to touch the person or property of a citizen, humble or great, our law speaks. It says there cannot be two sovereigns in this land. The law of the land is sovereign.

The Constitution of Pennsylvania, the first section of the first article declares as sacred, "Life and liberty," "possessing and protecting property," putting property on the same level of guarantees as life and liberty, making them all "indefeasible rights." Yet we are gravely informed by this Bishop, defendant, that the law of the land cannot interfere to protect this plaintiff in his property right. That the Supreme Court at Rome will upon appeal or complaint decide and determine by its will at its own time and way the question of property involved in this trial. Is it possible that there is

a power sitting hording at Rome in the Vatican, a power which can decide whether the plaintiff shall starve or live?

We do not object to the Roman Catholic Church building churches, establishing retreats, instituting seats of learning, schools, seminaries and other institutions, not injurious to the morals of the people and the welfare of the community. We *tolerate* belief, wild or wise, but when belief eventuates in action and touches the property or person of the humblest citizen, then the hand of foreign power is stayed. Then the sovereign power of our law shielding and protecting all the citizens of the land is supreme and final.

Let me suggest by way of illustration of the principle which I am attempting to enforce. Suppose that at the time of the division of the Diocese of Pittsburgh, the Diocese of Pittsburgh had owned ten shares of stock in the Allegheny Suspension Bridge, he knew that the boundary line of the Diocese of Allegheny was at Pittsburgh, the Allegheny river. In case of a dispute who should receive the dividends declared by the bridge company. Would the Pope of Rome decide that question? That would be a small question compared to the "title" of this plaintiff. That being a property question must be decided by the law of Pennsylvania, and the Pope's voice would not be potential in the controversy. I might give your Honor many illustrations exhibiting the absurdity of the claim that the Supreme Court of Rome may decide property rights in Pennsylvania. When did Pennsylvania abdicate her sovereignty? Whilst discussing this question I desire to say a word further about this Church. It cannot be a Pennsylvania corporation. It is not a *quasi* corporation. We call it that by courtesy. It lives and grows in our midst *by toleration*, and the legislation in our statute books show that our people are keenly alive to the influence of foreign power. My learned friend, Mr. Barton, spoke of certain laws as the outgrowth of "Know Nothingism." We know all about that. I left my party—left the friends of my boyhood and manhood and fought that party by the throat until I saw it die. Whilst we guarantee equal rights to citizenship, we must not forget the dignity of our sovereignty and relegate a citizen to a foreign power for a redress of grievance concerning his property.

But say my friends on the other side. The Bishop as spiritual head of the Church has the right to judge of the capacity and character of the priest; his fitness to fulfill priestly duties. Granted.

That is far away from the issue here joined. If the plaintiff has failed in the performance of his duty as a priest, proceed according to your spiritual jurisdiction. File your charges, give him his day in court, try him according to your law with regularity and give judgment according to your own spiritual law. To that law he is responsible and he has contracted to obey its lawful mandate. But he cannot lose his property, his title, before regular trial and conviction.

It struck me with great force that the defendant, Bishop Tuigg, does not know upon what ground to put his defence to this action. When the plaintiff called upon the Bishop and gave him notice of his readiness to work in the vineyard, what is the Bishop's response? "You do not belong to me." At another time he admits that he is a priest of the diocese and proposes to impose a year's confinement in a spiritual penitentiary. Another defence, and an exceedingly novel one. The Bishop had his doubts about the plaintiff's fitness. Grant it, therefore, he resolved his doubts into a determination to condemn his priest without trial or hearing. Why these inconsistent defences? If the Bishop had an honest reason for denying the plaintiff support, why give false reasons for it? Says the counsel of the Bishop:

"We make no charge. We neither charge a crime nor irregularity, nor anything wrong, but the Bishop had a right to his doubts." Was the plaintiff to starve until the Bishop resolved his doubts?

Thus we have the clear statement of the Bishop's counsel, in his presence and hearing, that the defendant was not charged with either crime or irregularity, nor anything wrong. We are here to-day demanding our "decent support," which has been taken from him by the arbitrary and illegal will of the Bishop, and we are met with the novel proposition, the Bishop has a right to his doubts, and the courts of his country have no jurisdiction to restore the plaintiff his property.

Upon my brief your Honor will find citation of numerous English cases where the civil courts supervise control and correct all the errors of judgment and jurisdiction of the spiritual courts. Under title Prohibition in Brown's Abridgement, Canon's Digest, hundreds of cases are reported where the common law courts prohibit the spiritual courts when they presume to touch questions of property or the civil rights of individuals. It would be wasting your Honor's

time to enlarge upon this right of the common law courts to supervise and control the spiritual and other courts of limited jurisdiction. Unless the State of Pennsylvania is willing to surrender her sovereignty over the liberty and property of her citizens, the courts of the State must entertain jurisdiction and decide questions of civil right arising under the contract for decent support.

Pennsylvania, by her legislative and judicial decision, in pursuance of that legislation, has given clear intimation of her sovereign will. A long line of decisions appear in the State Reports, by which the principle is established beyond inquiry or cavil, that no man can be deprived of his membership in any association or society, whether incorporated or a *quasi* corporation, tolerated under our law, without notice, hearing and trial. This principle applies to all associations beneficial in their character, whether religious, charitable or purely business or commercial.

It is claimed that the Roman Catholic Church, the Diocese of Pittsburgh, is not beneficial in its character, purely spiritual, purely spiritual. If so, it should not employ the agency of men with appetites, tastes and physical necessities and contract to pay them for their labor. They should invoke the service of pot metal men, who have neither stomachs nor appetites, who neither hunger or thirst, and never weary in well doing.

I will not dwell upon this phase of the legal question before your Honor, contenting myself with authorities on my brief.

It is alleged by the defendant and his counsel that the plaintiff was absent from the diocese for five years immediately prior to the appointment of the defendant to the Diocese of Pittsburgh. If true the fact would be wholly immaterial, unless he had lost his standing as an approved priest of the diocese. The evidence is conclusive upon the fact that the plaintiff was a priest of the diocese—the peer of John Tuigg—the day that John Tuigg was elevated to his present position. Those five years of the plaintiff's official life were passed under the overseership of Bishop Domenec, and one not within the power of Bishop Tuigg. Father Sheehan was an approved priest the day of John Tuigg's induction into office, and no "charge of crime, irregularity or anything wrong," has ever been made against his integrity as a man, his honor as a gentleman, or fitness as a priest, from that day to this day of trial. Yet, because Bishop Tuigg "has a right to his doubts," my client is disfranchised

of his rights, his living taken from him without notice or trial at the will of one man, who sits in court silent, whilst his counsel defends the wrong on the feeble excuse that their client, the Bishop, "has a right to his doubts." That Father Sheehan was an approved priest of the Diocese of Pittsburgh when Bishop Tuigg was appointed is proved by the oath of the Rev. Hickey, Vicar General of the Diocese, by the oath of the plaintiff and other evidence. This was not denied by the defendant when on the witness stand testifying in his own behalf, therefore it is admitted and beyond controversy.

The absence of the plaintiff since the appointment of the defendant has also been commented upon and made the subject of palliation for the defendant's refusal to give the plaintiff work. Here is the fact. The plaintiff called upon the defendant in 1876, and tendered his services. What was the answer or reply of the defendant? "You do not belong to my diocese." Instead of a hasty recourse to the law, with patience the plaintiff waits for a sober, kind, second thought. That thought does not come to the Bishop's mind or heart. Then the plaintiff makes complaint to Philadelphia, and eventually visits Rome. The letters in evidence manifest the mind of Rome on the situation. There was no appeal, because there was neither trial or judgment. There can be no appeal without a previous judgment or sentence. The evidence of experts, called by the defendant, upon the subject of appeals was neither useful or instructive.

The absence of the plaintiff was induced by the wrong of the defendant. No man, whether ecclesiastic, cleric or layman can successfully plead his own wrong as a defence in a court of justice. Again, it is suggested that the Bishop told the plaintiff to enter a convent for a year. That is a spiritual penitentiary. If the plaintiff was not a priest of the diocese, what right had the Bishop to consign him to the solitary cloister of a spiritual retreat in a penitentiary? If he was an approved priest, why punish without charge, trial or conviction? In one breath this spiritual father brands the plaintiff as a foreigner; in the next seeks to administer ecclesiastical punishment.

The presumption of innocence exists in every civilized land. But it is argued here by learned counsel that absence raises a presumption of guilt. I think it is the law of the land, and of every civil-

ized land, that every man is presumed innocent until his guilt is established by trial, conviction and judgment.

It has been earnestly claimed by some of the witnesses, in substance, that the Bishop of a diocese may and can refuse support to a priest for reasons within his own breast, without charge, trial or conviction. I admit this, the purport of their testimony. They further aver that this is common law, the law of the Roman Catholic Church. The weight of evidence, both in numbers and in character deny that such is the law of the Church. I shall waste no time or words upon this proposition, satisfied that it is not the law of that Church, knowing that no such law could receive the sanction of just minds. I dismiss the pretension with this remark: If such is the law of the Catholic Church it can find no support or room for exercise on American soil. The courts of Pennsylvania have proclaimed in clear and unmistakable terms that no such power can dwell in the will of one man. It is the law of Pennsylvania that all associations, societies and corporations, must so conduct themselves in their administration of their associations as not to transgress the law of the land. Any rule, regulation, by-law or charter embodying such a rule would be void in Pennsylvania. Membership in societies, associations or corporations will be protected by the law of the State. In my brief those Pennsylvania cases were cited, especially the case of *Ropp vs. Lutheran Church of Butler*, where the Supreme Court reinstated in membership certain parties ousted by the will of their fellow members. I affirm that the authorities are uniform for hundreds of years. That all inferior and special jurisdictions are under the control and supervision of the common law courts, and when they transgress their own law or make laws or regulations contrary to the law of the land, the courts of common law will restrain, reverse and annul their proceedings, especially in all matters of property, right or membership in any society or corporation under our laws.

Another startling defence is that the plaintiff has no right to redress in the civil courts because he has a right to appeal to what has jocularly been termed "The Supreme Court of Rome." We have discussed the question of appeal in our argument. Appeal from what? Appeal from the Bishop's power. Appeal when the Bishop simply keep his hands in his pocket and holds the means of support

from his priest whom he has sworn to support? Treating this defence with gravity, what is it?

This priest has a just civil claim for his property—his official income. The courts of the State are invited to throw him out of the halls of justice and remit him to his remedy at the Supreme Court of Rome.

It was the boast of England that she brought justice to every man's door. The Hundred, the Township, the County, and finally Westminster Hall bounded the penalty of delay. In Pennsylvania it is earnestly urged that a priest who has a just claim for a small sum of money must beg his way to Rome, and exhaust the persuasions of eloquence in that forum before his rights of citizenship shall be recognized in a Pennsylvania forum. Suppose the claim was but one hundred dollars. The remedy would be eminently worse than the original wrong. How is a poor pastor to meet the demands and expenses of travel? Even if the plaintiff should prove successful in the Supreme Court at Rome, what form of execution would be honored by our local courts? A full, ample and complete remedy at Rome. The Pope of Rome, in days gone by I trust forever, has commanded kings and emperors to obey his commands in things temporal as well as things spiritual. The Pope has claimed supreme temporal authority over the faithful. Is this mouldy claim to be set up in this day of liberty and light? Will Pennsylvania refuse redress of wrong until a poor priest has begged his way across the Atlantic to beg justice at Rome? If your Honor please, a few months since my soul was touched when an eminent Catholic priest was compelled to advertise for alms that he might present his appeal before the Supreme Court of Rome. I refer to the case of the Rev. Father Hickey. Think of that learned priest and Christian gentleman's choice to stand upon the public streets as a mendicant that he may seek the ample and complete remedy of an appeal to Rome.

It is an insult to our administration of public justice to say that your Honor has not the right to try a money issue at the door of the litigants; that it must be transmitted to Leo. The defence of the defendant may be stated in a few words. It stands upon the proposition that the Rome Catholic Bishop of Pittsburgh can at his pleasure starve his priests without assigning any reason. Then the remedy of the priest is the poor-house. The policy of the law will

not permit such doctrine to be grafted upon our jurisprudence. If the parents of an infant are responsible for its maintenance during its inability to maintain itself, by the same reason the Church or Bishop that strips a man of the right or power of self-sustentation is equally bound in law and conscience for his support.

There are many topics inviting my attention in this discussion, but I must restrain myself. We start out with the proposition that the title of a priest is property. That being so, before you take that property from the owner you must try him, convict him and pronounce sentence.

Second—By virtue of the "title" a priest is entitled to a decent support from his Bishop as long as he is an approved priest of the diocese, and he cannot lose his title—his property—without a day in court, without trial according to law.

Third—That our remedy is in the courts of own land, not at the pleasure of a foreign potentate. The pretence that the Pope has jurisdiction to pass upon the right of property of an American citizen on American soil is monstrous. The statement of the proposition carries its own answer. I say that this suit is instituted in the proper court, in the right jurisdiction. I wish to "distinguish" here, and you will pardon the remark when I say the scissors have not been idle in preparing the report of testimony in this case. I believe there is an authentic record in existence as to the number of times that evasive word "distinguish" was called into service. I may be pardoned for its use once. The Stack vs. O'Hara case is distinguished from this in many respects, distinctively in this: That was a bill in equity to restrain the Bishop from removing the priests from the exercise of his priestly functions in one parish of the diocese. The power of the Bishop to place his agent in whatever parish he pleases within the diocese is not disputed. Whether the priest is employed in work or is idle the priest must live, and the Bishop must provide that living—a decent support. The case is valuable as an authority only as deciding that the office of a priest is property.

I conclude with what I have to say with a remark or two touching this case. It is not an inconsiderable case. It may be the first case of the kind, but it will not be the last. It is based upon principles that underlie all true government. It is not desirable that this case should be settled or compromised without the judgment of the law

of the land. The dignity of our law demands a final determination of the questions involved.

This action is not brought for a parish or pastorate. We concede that the Bishop's will should under the Rome Catholic law govern the priest as to the field of labor. The right of support flows from the relation, not from pastorate or parish labor. The "title" lives like the Bishop's office. The duty of support is in no degree dependent on work. The salary or support is attached to the "title," not to the work.

What is a decent support! It ought to be respectable, in keeping with the dignity of his calling in both clothing and bodily comforts. I mean creature comforts. I "distinguish" between spiritual and creature comforts. I do not know how the Bishop takes this world; I have never dined in his palace. I know that the learned, pious and distinguished gentleman, Bishop O'Conner, who occupied the old house, was not a sumptuous liver. His table was good. I was happy to feel that we were friends. I am told that some of these ecclesiastical gentlemen live well; that their digestion is good; that the solids and liquids agree in harmonious health and comfort in their homes. They appear to have ruddy health and plentiful flesh on their bones. They look oily and comfortable. I trust the Bishop when he pays this little claim will, with good conscience, gather comfort to his soul and flesh to his bones.

DECISION OF THE COURT.

By agreement of the parties, filed January 20th, 1881, and a supplemental agreement, filed May 3d, 1881, this case was referred to me, as Judge of the Court of Common Pleas No. 2, under the Act of Assembly, approved 22d April, 1874.

After hearing the parties, their proofs and allegations, and the arguments of counsel, concluded May 24th, 1881, and after due consideration thereof, I find for the plaintiff against the defendant, eight hundred dollars. I also find the facts in the case as herein-after stated; and herewith file my answers to the points presented by counsel, with my decision on the questions of law involved.

J. W. F. WHITE,

Judge of Common Pleas No. 2.

MAY 27, 1881.

STATEMENT OF FACTS FOUND.

1. The plaintiff, Rev. P. M. Sheehan, was ordained a priest in the Diocese of Pittsburgh in 1857, by Rt. Rev. M. O'Connor, then Bishop of the diocese. He was appointed, from time to time, to different missions or congregations in the diocese by Bishop O'Connor, and by Bishop Domenec, who succeeded him.

2. For some years prior to 1871 the plaintiff had been in charge, under Bishop Domenec, of a mission, or congregation, at Cameron's Bottom, Indiana county, Pa. At the end of the year 1870, afflicted with paralysis and rheumatism, he came to Pittsburgh to enter a hospital for treatment, and resigned his congregation to Rev. John Hickey, who was then the administrator of the diocese, which was accepted by Father Hickey, who told him when he was fit for duty, "there was a mission open for him." (Sheehan's Tes., p. 2, 3; Hickey's Tes., p. 26.)

3. Some weeks or months after that plaintiff got a leave of absence from the diocese from Father Hickey, the administrator, until his health should be restored. (P. 3 and 26.) He was absent until 1875. During his absence he received two letters from Bishop Domenec, granting him permission to officiate. (P. 7.)

4. During his absence he visited New York, Niagara, Buffalo, Toledo, Waupau, Milwaukee, Marquette, Green Bay, Lake Superior, New Orleans, Little Rock and Hot Springs in Arkansas, St. Louis, Covington, &c., and in most of these places officiated as a priest, under authority of Bishop Domenec. (P. 7, 8, 9.)

5. He returned to Pittsburgh in October, 1875, while Bishop Domenec was still the Bishop of the Diocese. About ten days after his return Bishop Domenec suddenly and unexpectedly left for Rome, and was absent until the following February or March, leaving Rev. J. Hickey as administrator of the diocese. During his absence the diocese was divided, a portion of the territory formed into a new diocese, called Diocese of Allegheny. In March, 1876, Bishop Domenec was installed Bishop of the Diocese of Allegheny, and Rev. John Tuigg consecrated Bishop of the Diocese of Pittsburgh. Cameron's Bottom was included in the territory of the Diocese of Allegheny.

6. On the plaintiff's return in October, 1875, he spoke to Rev. John Hickey about getting a congregation. He promised to see the Bishop and have it fixed. During the Bishop's absence he also applied to him, as administrator, but under his instructions he declined to make any changes in the diocese during the Bishop's absence. (P. 3-29.)

7. About the date of Bishop Tuigg's consecration, March 19th, 1876, the plaintiff applied to him by letter, and also got Father Wall to speak to him for an appointment. At that time the Bishop took no action in the matter, being busy and but initiated. Shortly after that the plaintiff had a personal interview with the Bishop, requested an appointment to a mission or congregation, and was refused. The grounds of the refusal were: 1st. That plaintiff was not a member of the Diocese of Pittsburgh, but properly belonged to Allegheny. (Pages 2, 39, 44, 46); and 2d. That the Bishop was not satisfied of plaintiff's fitness for the charge of a congregation, and required some evidence on that point, especially of his deportment during his absence from the diocese. (Ps. 36, 37, 160.) The Bishop also suggested that he retire to some religious house for a while, to which the plaintiff replied that "his health was bad and he could not do that well." The Bishop did not direct or command him to go to a monastery, but "gave him a choice of going there or being refused his mission." Nor did he offer to pay his expenses

if he went to the monastery. He testified that he had evidence that during the plaintiff's absence "his course of life had not been regular." But he did not inform the plaintiff of what he had heard in reference to him. He gave the plaintiff as a reason why he ought to go to a monastery that "he had been so long without a mission that he must have gotten out of order somewhat, and that he ought to retire to a monastery for a time, and if he proved himself worthy, I would consider his case, provided he retired for one year." (Pp. 160, 161.)

Since plaintiff's return in the fall of 1875, he has not been employed as a priest, or performed any priestly offices in the diocese, nor received any maintenance or support from the diocese or the Bishop; living upon the charity of friends, chiefly.

9. After the refusal of Bishop Tuigg in 1876 to give him employment, or recognize him as a priest of the diocese, the plaintiff wrote to Archbishop Wood, of Philadelphia, to intercede in his behalf (p. 5), but without effect. He remained in the city until April, 1877, unemployed and without support. He then went to Rome and made an informal complaint against the Bishop. He presented at Rome an affidavit of Father Hickey that he (plaintiff) was without any ecclesiastical censure; that he had voluntarily resigned his mission to get another, and that he had obtained permission from his administrator to absent himself for a time and to return with his rights. (P. 5.) On which he obtained authority to officiate as a priest in Rome, and did so officiate frequently. (P. 5.)

10. He remained in Rome until September, 1878. During this time Bishop Tuigg received three letters from the Prefect of the Propaganda at Rome, concerning the plaintiff. The first from Cardinal Franchi, dated 31st January, 1878, informing the defendant that a priest of his diocese, the plaintiff, was at Rome, who seemed to be much prone to the vice of drunkenness; that he had commanded him to make a spiritual retreat for some days; that he was then staying at the Passionists Monastery; that he hoped he would improve and lead a better life, but as he was entirely destitute, it was necessary that he (the Bishop) re-call him and provide for his destitution, recommending that he be received into some religious community, where, filling some office (especially as he seemed by no means to lack talent) and living under vigilance and guardianship he might be entirely cured. The second, from Cardinal Simeoni,

dated 2d of May, 1878, stating that plaintiff was still at Passionist Monastery, at the expense of the Sacred Congregation; that he seemed to follow a better life, but could remain no longer there; that the annual payment of fifty dollars which defendant had sent was not sufficient to keep him there, and that it had been considered expedient for him to return to America, and that he, the defendant, provide by the best means he could for his support, either in a hospital where he could perform some duties, or in some other institute of his, or some other diocese, (p. 351.) The third, from Cardinal Simeoni, dated 24th August, 1878, stating that the plaintiff after remaining at Rome a long time, to attend to certain particular affairs of his own, had now been commanded to return to his own country, since his longer stay at Rome was too burdensome to the Sacred Congregation, and entirely useless to himself, and concluding in the words: "But since for some time he sedulously engaged in making a spiritual retreat, it is to be hoped in future he will lead that life which very much becomes an ecclesiastic. I most earnestly recommend him, on his return, to your Episcopal charity; nor do I doubt that, in such manner and way as you can, you will make use of his labors, according to his capacity, in the exercise of the sacred mission," (p. 352). He left Rome in September, 1878, stopped a few days in London, landed in New York, where he remained a few weeks; then went to his mother's, in Virginia, where he remained till Spring, (p. 34). He came to Pittsburgh in June, 1879, and made another application to the defendant for work or support. A few days before he came he wrote a letter to the defendant, that he was "here under the instructions and at the expense of the Propaganda, and the letter was to forgive and forget," (p. 336); that he would do anything he (the defendant) would ask, in order to have a reconciliation, and that, to get supernatural strength for this, he had made a spiritual retreat at Baltimore, (p. 336). At the personal interview which followed, at St. Xavier's, in the city, in June, 1879, he repeated to the defendant his willingness to obey and do anything to get on a mission, (p. 336). He said to the Bishop: "Here I am; what am I going to do?" The Bishop replied: "I don't consider you a priest of the diocese any longer." The plaintiff then asked: "What am I to do for a living." The defendant replied: "You know the country as well as I do." The plaintiff said to the defendant: "I will go over there to that Monastery, and I will stay

there as long as you please." To which the defendant answered : " You go there as long as you please." The plaintiff, in his testimony, adds, (p. 258), " I told him no one could really be kept from it; and I told him so, and he refused, and I did actually go the next day, and was refused. I have asked for every kind of support and taken every kind of remedy and complaint, and have come in here for the laws of my land."

12. The plaintiff was not tried and convicted of any offense ; he was not notified of any charges or complaints against him ; he was not removed from any mission, congregation or post ; nor was he formally suspended from the office, functions, rights or privileges of a priest. He was simply denied an appointment to any work, and refused any support by the defendant, on the ground that plaintiff was not a priest of the diocese, or if he was, he was unfit to have charge of a mission or congregation.

The foregoing statement of facts is based on the testimony of the parties. When one of them states a fact, not contradicted or denied by the other, it is taken as true. When they differ, I have endeavored to extract the exact truth from all the evidence. There was, however, not much difference on the questions of fact. The main difference was on questions of ecclesiastical or canon law.

The motives of the defendant, or his personal relations, toward the plaintiff are not a material element in the legal disposition of this case, being an action of *assumpsit*. But I take great pleasure in saying, and so find if it be material, that there is no evidence that Bishop Tuigg in the treatment of the plaintiff was influenced by any personalty, hostile or unkind feeling toward him. He acted from a conscientious sense of duty. He did not regard Father Sheehan as a priest of the diocese for whom he was bound to provide, but considered him as now properly belonging to the diocese of Allegheny. From what he knew or had heard he doubted his fitness for the charge of a congregation. He required evidence of his fitness, either by letters or trial in a religious house, before he would give him work or engage to support him ; and the facts of the case justified these doubts and caution. Father Sheehan had been absent from his diocese for more than four years, and when he returned he brought no letters or evidence as to his deportment during his absence. His non-employment and non-exercise of the priestly functions for six months immediately preceding the advent

of the defendant as Bishop of the diocese were calculated to excite suspicion. His long delay in reporting himself after being sent home from Rome was inexcusable and no doubt had great influence in defeating his application in 1879.

OPINION AND DECISION OF QUESTIONS OF LAW.

A great deal of evidence was offered on both sides as to the general powers, rights and duties of a Bishop and a priest under the canon law of the Catholic Church. Much of it has relation to the refusal of Bishop Tuigg to give Father Sheehan missionary work, the plaintiff claiming that his refusal was wrong and uncanonical; the defendant, that it was right and canonical. That question I do not think material in the determination of this issue—at least it is not the pivotal point of the case. If the plaintiff's right of support depended on his having work it would be material. But that is not the case. If he was qualified and worthy, ready and willing to work, he is entitled to support. The plaintiff asked for a mission, or a congregation. The giving or refusal of that is wholly in the discretion of the Bishop. He is the judge of the qualifications and fitness of a priest for any particular post or work. That duty is confided to him by the highest authority in the Church. It rests in his sound discretion, and the civil courts have no right to interfere with him in the exercise of that discretion. If the plaintiff was aggrieved in that respect he must seek redress in the Church tribunals, and if they give him none he has none.

This action is not to compel Bishop Tuigg to give the plaintiff work. He claims to be a priest of the diocese, and as such entitled to a decent support, which the Bishop is bound to furnish. He was ready and willing and offered to work, but was refused. The Bishop could refuse to give him a mission, and give him some other work in the diocese. But if he gave him no employment he was still bound for his support, so long as he was a priest of the diocese in good standing or not under ecclesiastical censure. In the limited time I have had for consideration since the argument I can do little more than refer to the questions raised, and briefly indicate the principles of law upon which I think the case should be decided:

First.—Is the plaintiff a priest of the Diocese of Pittsburgh? He was admitted as such prior to the division in 1876. His last charge was at Cameron's Bottom, which fell into the Diocese of Allegheny. But he had resigned that charge five years before the division. At the time of the division he had no charge. He was living in Pittsburgh. There was nothing to identify him with the new diocese. He belonged to the Diocese of Pittsburgh by name and residence.

If there could be any doubt on this point on principle I think it settled by the letters of the Prefect of the Propaganda at Rome, which recognize him as a priest of the Diocese of Pittsburgh.

Second. Has the plaintiff a legal claim for support founded upon contract? Among all Protestant Churches the support of the pastor rests upon a contract between him and the particular congregation he serves, or upon some church regulation by which the congregation is liable for his support. If he does not get a competent support he can quit the ministry and enter into some worldly employment for a livelihood. No so in the Catholic Church. The vows and oaths of the priest bind him to devote himself exclusively and perpetually to the ministry. He cannot engage in any worldly business. He cannot quit the work or be released from his oath even with the consent of his Bishop; he must have the consent of the Sacred Congregation of Rome. He does not choose his work. He cannot select a congregation and make a contract with it. He is bound by his oath to obey his Bishop. He must go where he is sent. He must do the work assigned him. In the pastoral charge of a congregation he is the agent or representative of the Bishop, and must account to the Bishop for the monies received. He cannot fix his own salary; that is fixed by the Bishop.

This relation of the priest to the Bishop and the Church in the Catholic Church necessitates peculiar provisions for their support. As the Church demands all their time and services, and excludes them from all other means of a livelihood, the Church must support them. As the obligation of service is for life, the duty of support is for life.

Not every man can be a priest. The Church requires several years of close study and preparation. Even then it is not a matter of course. The Bishop must consent and ordain him. And to guard against improper persons, or too many getting into the priest-

hood, the Bishop is required, under pain of suspension or deposition, not to ordain a priest unless he has secured to him a decent support. That right to support is called his *title*. No priest can be ordained unless he has his *title*, a guaranty of support. In the United States it is called a title to a mission ; a mission in this sense meaning a diocese of which he is ordained a priest.

The right of a priest to a perpetual support from the diocese is, therefore, based upon a good and valid consideration, namely, his solemn obligation to devote himself for life to the work of the ministry in the diocese, and his renunciation of all other means of a livelihood. It is a contract between the priest and the diocese.

On this point there is no dispute. All the expert witnesses who have given us their testimony, and all the authorities cited, agree in saying that the diocese is bound for the support of the priest. Dr. Quigley, one of the ablest expounders of canonical law in the United States, in his testimony expressly calls it a "contract," (pp. 74, 96), and Judge Dunn, of counsel for defendant, in his printed argument, admits that "a priest in good standing is entitled to support, as a matter of strict right binding on the conscience of the people of the diocese."

The existence of the obligation or contract is admitted. The dispute is as to the extent of the obligation, how it may be enforced, and when the diocese may be released from the duty of support.

Of course, like all other contracts, it may be broken by one of the parties, and if broken by one the other is released.

Third. Has the plaintiff forfeited his right to support ?

The grounds upon which it is claimed he has are, (1) absence from the diocese ; (2) disobedience to the Bishop ; (3) unworthiness.

It is not alleged that plaintiff abandoned his *title*, or left the diocese without lawful permission, nor that he refused to perform any work assigned him. If his testimony and the testimony of Father Hickey is to be believed, and there is no evidence to the contrary, he was absent from 1871 to 1875, with the permission of his ecclesiastical superior, who had the power to grant him leave of absence. His delay on the journey from Rome is not material in this case for the suit is for support prior to that. Although that delay was inexcusable, it was not such a fault as forfeited his right to support.

Nor does it appear in any way that if he had come directly home, he would have received employment or support.

The evidence does not establish any direct or positive act of disobedience to his Bishop. The Bishop merely suggested his retirement for a while to a Monastery. He did not command him to go. He did not offer or promise to pay his expenses if he went. When the defendant, on his examination, the direct question, if he had offered to pay for his support at the Monastery, he answered: "That very moment he refused to go; so there was no question of payment." He was then asked: "If he had gone would you have paid?" to which he replied: "He refused to go at all, whether I paid the expense or not." Question—"He said that?" Answer—"He told me he would not go," (pp. 160-161). In the plaintiff's testimony (p. 258), he offered to go to a Monastery if the Bishop desired it, and would provide for him, and actually went the next day, and was refused. This evidence is not contradicted. The main ground, however, on which it is claimed plaintiff has lost his right to support, is his unworthiness. No doubt unworthiness, unfitness, brought on by his own fault, to perform properly the duties of his sacred calling, would be a breach of the contract between him and the Diocese, and forfeit his right to support. Was the plaintiff, then, unworthy? Plaintiff denies it, and asserts that there never was any sentence, decree or decision that he was unworthy. He was a priest, for over twenty years, of the Diocese. He says he was in good standing, an approved priest, without any ecclesiastical censure. It is not alleged there ever was any trial or sentence against him. The evidence does not show he was accused of any crime. It is insinuated he was prone to the vice of drunkenness. The Bishop says that he had evidence that during his absence, from 1871 to 1875, "His course of life had not been regular." But he does not say in what the irregularity consisted. Nor did he tell the plaintiff what he had heard. Then, when giving the reason why he should go to a Monastery, he says: "I told him he had been so long without a mission that he must have gotten out of order somewhat, and that he ought to retire to a Monastery for a time, and if he proved himself worthy I would consider his case, provided he retired for a year." The Bishop also asked him if he had any letters or documents for the time he was absent. This, however, the plaintiff denies, (p. 344). This is all the evidence there is on the subject, and

all the information vouchsafed to the plaintiff when he was refused work, in 1876. His conduct in Rome, as evidenced by the letters from the Propaganda, is material on the point we are now considering; for that was afterwards. But these letters are very significant in this, that the Propaganda did not consider his conduct in Rome forfeited his claim upon the Diocese for support.

The contention for the defense is, that as the Bishop had no evidence that the plaintiff was worthy, and from what he had heard, believed him unworthy, and for that reason refused him a mission; therefore the plaintiff is not entitled to support. Is that position tenable?

I have said that the appointment or refusal to a mission is purely within the discretion and sound judgment of the Bishop, and whether the Bishop did right or wrong in that act the civil courts will not inquire. The question is whether that act deprived the plaintiff of his right to support. His right to support is plaintiff's title, his property. His right to a mission, that is, to have charge of a congregation, is one thing; his right to support is another. The Bishop is the exclusive judge of his fitness, his worthiness, for a mission. Can the Bishop also, without a hearing or trial, decide whether he is worthy to receive support? Under Decree No. 77 of Second Plenary Council of Baltimore, which is the common law of the Catholic Church in the United States, priests are entitled to a trial before a tribunal created for the purpose in all *causis criminalibus*, that is, in all criminal cases. It is admitted by Dr. Quigley (p. 85) that drunkenness is a crime within the meaning of that decree. It follows, therefore, that the Bishop could not deprive the plaintiff of his right to support, on the charge of drunkenness, without first having him tried and sentenced.

Can the Bishop for any other cause or reason deprive a priest of his right of support without giving him a trial? If he cannot do so for *great* offences, for *crimes*, it seems to me that the logical and inevitable inference is he cannot do so for *small* offences.

Depriving a priest of his *title*, his right to support, his only means of earning a livelihood, his all in this world, and turning him out to beg, or live on the alms of his brother priests, is a punishment of the severest character. Can a Bishop do that without giving the priest notice of the charges against him, and without giving him a trial and opportunity of defence? If so, then the

priests of the Catholic Church are the most abject slaves, the most helpless and unfortunate of human beings. I am satisfied such is not the law of the Catholic Church, and if it were, the law of the land would not tolerate it. The spirit of our free institutions and our organic law forbid it. Among the inalienable rights of every citizen, as set forth in our Declaration of Rights, are those of "Enjoying and defending life and liberty; of acquiring, possessing and protecting property and reputation." These rights are inalienable; they cannot be sold or given away. Even if the plaintiff had agreed in his oath of ordination that the Bishop, at his own will and pleasure, might deprive him of his property, our declaration of rights comes to his rescue, and declares the agreement null and void. The plaintiff, therefore, has not been found or declared unworthy in such sense or in such manner as to deprive him of his right to support.

It does not follow, however, that the Bishop or the Church must be burthened forever with the support of the plaintiff, if he be unworthy, or of any other unworthy priest. I simply decide that, in this case, the unworthiness of plaintiff has not been established, and until that is done he cannot be deprived of his support. If the Bishop thinks the priest so unworthy as not to be entitled to a support, to have lost or forfeited his title, his right to support, he can pursue the proper course for determining that course, and for releasing the diocese. If not so unworthy, but wanting discipline, he can send him to some religious community to be properly instructed and provided for. The example of the Sacred Congregation, in this very case, should be imitated by all Bishops. Deal gently and kindly with the erring one. Reclaim him if possible. Don't drive him to utter ruin by harshness. Don't send him out into the cold world without a home or shelter, to beg his way, and become a pauper upon the charity of the good and merciful. But if he prove irreclaimable, hopelessly bad or utterly unworthy, then cast him out from communion with the faithful.

Fourth. Whose duty is it to support the plaintiff? The contract for the support of the priest is with the diocese through the Bishop as the representative of the diocese and Church. Ordinarily he gets his support from the congregation he serves. But that his support is not wholly dependent upon the congregation is manifest from the fact that some have to be supported who have no

congregations. Deacons and sub-deacons are entitled to support, but they have no congregations. If the priest had to depend upon his congregation for support he could be starved out by the Bishop giving him no congregation, or one where he could not get an adequate support. It is also in evidence that where the congregation was unable to pay the salary it has been customary for the Bishop to make it up from other sources. The Bishop fixes and regulates the parishes and determines the salaries. He is the only one in the diocese who has power to raise money. All the priests act under him as his agents. It is as much his duty to take care of and provide for the priest as to care for the parishes. The priest has no right to collect or receive money without his consent. All funds must be accounted for to him. It is his duty to see that the priests are supported, and to provide the means for that purpose. No other one in the diocese can do it. The *right* of the priest to support implies a duty on some one to furnish it. On Bishops as governing and ruling power in the diocese devolves that duty. To say that the priest's right of support is simply a claim on the charity of the faithful, is paltering in a double sense; "keeping the word of promise to the ear and breaking it to the hope." If it is, as Judge Dunn says, a "strict right binding on the conscience of the people of the diocese, it is a duty equally binding on the conscience of the Bishop to see that the people faithfully fulfill that conscientious obligation. He can do it and no other can."

Fifth.—Has the plaintiff a remedy in the civil courts?

It is strenuously contended we have no jurisdiction in the case, because the plaintiff has an adequate remedy in the Church; and (2) he has no remedy at all.

Dr. Quigley and Dr. Hecht both testified that for the alleged injury to the plaintiff, by the Bishop refusing him an appointment or support, he had an adequate remedy by an extra judicial appeal to the Archbishop directly or to Rome. This is denied by the plaintiff.

Without going into the question of extra judicial appeals, about which there was a great deal of testimony, I content myself with stating two propositions: (1) From the evidence in this case I do not think an extra judicial appeal an adequate remedy: and (2). In a controversy about property the fact that the injured party may have a remedy inside the Church does not exclude the jurisdiction

of the civil courts. It is said the plaintiff appealed to Rome and failed. I do not so understand the action of the Sacred Congregation. We have no formal decision. But the letters of the Cardinal Prefects to the defendant recognize the plaintiff as a priest of the diocese of Pittsburgh and the duty of defendant to support him.

Although the plaintiff was found weak and erring they tenderly cared for him. They did not believe him wholly unfit for the priestly office. In the letters of 31st of January, 1878, they recommended the defendant to "provide for his destitution," and place him where he can "fill some office." In their letter of May 2d, 1878, they recommend that provision be made for his support, and that he be placed where he can "perform some duties." And in their letter of 24th of August, 1878, when sending him home to defendant, they recommend that he "will make use of his labors according to his capacity in *exercise of the sacred ministry*."

After receiving these letters, I can hardly understand why the defendant did not give him some priestly employment, and provide for him. True, he tarried on his journey home. But there is no evidence that his conduct in the meantime was improper. From the extra judicial act of defendant, in again refusing to give him employment or support, and not conforming to the recommendations of the Sacred Congregation, must the plaintiff take another extra judicial appeal, and make another journey to Rome? And if so, how often, and when would he secure his rights?

But here is a question of property rights; the right of plaintiff to a decent support under the contract he had with the diocese. An extra judicial to Rome, a foreign power and jurisdiction, is not an adequate remedy, and does not exclude the jurisdiction of our civil courts.

In the pointed argument of Judge Dunn, he says the plaintiff has no remedy. While admitting that a priest "in good standing is entitled to support as a matter of strict right," yet he says it is only "binding on the consciences of the people of the diocese, and can only be demanded, according to canonical laws. The canonical law, so far, has, in this country, given only the right. It has not yet provided a remedy in case the right is withheld, unless, perhaps, by interdict or excommunication, as penalties to be inflicted upon culpably neglectful people."

This admission is very important in two respects: (1), It proves that the plaintiff has no adequate remedy in the Church; and, (2), It shows the power and duty of the Bishop to secure the right of the priest, and enforce the obligation of his people.

Sixth.—Can assumpsit be maintained?

The obligation to pay is the obligation of the diocese. But the diocese is not a corporate body; neither is it *quasi* corporation. It possesses no property, powers or rights, as a body politic, corporate or incorporate. Apart from the Bishop it is simply the territory within certain boundaries. Nor is the Bishop a corporation sole. He cannot be under our statute of 1855; but in his person, as an individual and officer of the Church, he possesses all power and authority in the diocese, legislative, judicial and executive. He is, therefore, in his person, as an individual and officer combined, the ecclesiastical entity known as the diocese. At his consecration and in his ordination oath he assumes all the duties and responsibilities of the diocese; he becomes personally liable as Bishop for the obligation of the diocese whether contracted by him or by his predecessor. This assumption of liability, if not express, is an implied promise to pay the obligation of the diocese, and of course will sustain the action of assumpsit. If assumpsit cannot be sustained, perhaps the plaintiff is without legal remedy. The Bishop is not a legal trustee in the proper sense of the word. He does not act as trustee. What he owns and does is in his own individual name. A mandamus could only command him to do what he is bound to do without it. It could give him no power to levy and collect money. He has that already. Personally, as Bishop, he assumed the duty of providing for the plaintiff's support, and personally, as Bishop, he must answer for neglecting that duty.

Seventh. How much is the plaintiff entitled to recover?

The statute law of the diocese, enacted by the Bishop, fixes the salary of a priest in charge of a parish at \$800 per annum, and of an assistant pastor at \$400. No allowance is fixed for a priest who is not a pastor or an assistant pastor. This statute therefore does fix the plaintiff's allowance, nor is his claim based upon it.

It is based upon the common law of the Church, which guarantees him a decent support. I do not think the plaintiff can claim the statutory allowance of \$800. Nor should any deduction be made while he was boarding with his mother or friends. He could

board there as well as in the city, since denied employment, and not recognized by the defendant as a priest of his diocese.

But some allowance should be made for the time he was in Rome, when he was at no personal expense, especially as the defendant contributed at that time fifty dollars for his support.

In view of all the facts I think eight hundred dollars a reasonable and sufficient allowance for the three years embraced in this action. To which opinion or decision on the questions of law involved defendant's counsel except, and at their request a bill of exception sealed.

J. W. F. WHITE. [L.S.]

The points of law presented by the defendant's counsel, where not covered by the above opinion, are refused, to which they except, and this bill is sealed.

J. W. F. WHITE. [L.S.]

ERRATA.

On page 213, read in Father Nolan's testimony, as the place where he studied Theology—left blank—the words, "Curlow College."

On page 264, Father Sheehan's testimony, read answer to following:

Q. Did Bishop Domenec give you any letters?

A. On two occasions, while I was away, I received letters giving me permission—

[The original notes show that the words "to stay" were not uttered by the witness. But by mistake, the words "to stay" were printed as part of the answer.]

NOTES OF AUTHORS ON CANON LAW.

I. PETER LEURENIUS, a German, a Jesuit, born in 1534, died in 1623, and was author of one of the most celebrated works in Canon law, viz.: *Forum Beneficiale*.

II. ANACLETUS REIFFENSTUEL (often cited as *Anacletus*) was a Bavarian, a Franciscan, of the last century; was author of some of the most celebrated works in law and theology, viz.: *Jus Canonicum Universale* (universal canon law), published in 7 vols., first in 1702 at Munich, and later, in 1831, at Rome. He also wrote a Moral Theology.

III. FRANCIS SCHMALZGRUEBER, a Jesuit and the author of *Jus Ecclesiasticum Universum*, 12 vols. quarto. Schmalzgrueber has been termed by most distinguished theologians *facile princeps Canonistarum*, i. e., evidently pre-eminently the admitted chief among canonists. His great work was first published at *Ingalstat*, in 5 vols. quarto, and at Rome, in 1843, in 12 vols.

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